



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JAN 3 0 2008

Ms. Denise Koscielniak
State Director of Special Education
State of New Mexico Public Education Department
300 Don Gaspar
Santa Fe, NM 87501-2786

Dear Ms. Koscielniak:

Thank you for your inquiry requesting clarification on three specific issues related to the implementation of the National Instructional Materials Accessibility Standard (NIMAS) provisions of the Individuals with Disabilities Education Act (IDEA). The Office of Special Education Programs (OSEP) at the U. S. Department of Education welcomes this opportunity to provide clarification on the complex implementation issues outlined in your letter of October 9, 2007 to the OSEP Monitoring and State Improvement Planning (MSIP) Division Director, Ms. Ruth Ryder. These clarifications are critical so that your students with disabilities have accessible instructional materials. This letter will address each issue as stated in your letter.

1. The publishers are taking the position that the requirement to provide NIMAS conformant files to NIMAC applies only to print instructional materials that were published after the date the NIMAS regulation was published in the Federal Register. In other words, 20 U.S.C. § 1474(e)(4) should be interpreted to apply only to new material and not to material published prior to July 19, 2006. Is this a correct interpretation of what "published" means in 20 U.S.C. § 1474(e)(4)?

This interpretation is not consistent with the IDEA regulations. Section 674(c)(4) of the Act provides that the NIMAS applies "to print instructional materials published after the date on which the final rule establishing the [NIMAS] was published in the Federal Register." The NIMAS was finalized July 19, 2006. In the preamble to the part B regulations in 71 Fed. Reg. 46620 (Aug 14, 2006), the Department interpreted "publish" as having "the plain meaning of the word, which is to issue for sale or distribution to the public." The Department further stated that "[t]he NIMAC's duties, therefore, apply to print instructional materials made available to the public for sale after the NIMAS is published in the Federal Register." Thus, it is clear that the word "publish" in section 674(e) refers to each sale of print instructional materials, and that this requirement is applicable to all new contracts for the sale of print instructional materials since July 19, 2006, notwithstanding when they were first published.

This interpretation, however, does not mean that all materials requested by State education agencies (SEAs) and local education agencies (LEAs) that meet the definition of print instructional materials in section 674(e) must be converted to the NIMAS and processed through the NIMAC. Rather, section 612(a)(23)(C) of IDEA, states that SEAs that choose to coordinate with the NIMAC, as of December 3, 2006, must enter into a written contract with the publisher of the print instructional materials to:

- (i) 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 (ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

The regulations also clarified that a lack of availability of NIMAS files through the NIMAC does not relieve SEAs and LEAs of their responsibility to provide accessible instructional materials in a timely manner, regardless of when the instructional materials were “published.”

There is an identical requirement for LEAs. Thus, SEAs and LEAs can comply with their obligations under IDEA not only by the direct deposit of NIMAS files to NIMAC for the materials they have contracted to purchase, but also by purchasing directly from the publishers those instructional materials that are produced in, or may be converted to, specialized formats.

The provision in section 674(c)(4) protects publishers from having to create NIMAS files for books that are still in inventory, but no longer being produced. However, we believe that SEAs and LEAs would be willing to be flexible when ordering print instructional materials that are less in demand and that would impose a hardship on the publisher to provide in the NIMAS format because they are already available in an alternative format. In this pursuit, we intend to disseminate a clarifying memorandum to SEAs stating that SEAs, LEAs, and publishers have options when contracting for print instructional materials that are less in demand, such as those of historical significance, and that it may be advantageous to all parties if the SEA or LEA purchases accessible materials that are not available in the NIMAS format directly from the publisher in formats that are already available.

2. The publishers are asserting that math and science print instructional materials are exempt from the NIMAS requirements because the National File Format Technical Panel has not included specifications for converting math and science symbols into the NIMAS format. This of course would mean that math and science print instructional materials would not have to be provided to NIMAC in NIMAS format. Is this correct?

This is not a correct interpretation. No curriculum content is exempt from NIMAS by statute, regulation, or recommendation of the NIMAS Development Committee. Section 20 U.S.C. 1474(e)(3)(C) states “The term ‘print instructional materials’ means 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 State educational agency or local educational agency for use by students in the classroom.” This includes math and science.

The NIMAS Development Committee agreed upon an interim solution pending formal adoption of specifications for math and science content: that Math concepts be represented as images and that all textual content be provided in NIMAS-conformant XML. (See NIMAS Development Committee notes, Orlando 2006, at <http://nimas.cast.org/center/committee/minutes-2006-01.html>.)

The NIMAS web site provides extensive guidance on the creation of NIMAS-conformant Math and Science content. The web site provides examples of NIMAS-conformant files with correct presentation of images within a NIMAS file set, including mathematical images. For further information, see:

- Math and Images at http://nimas.cast.org/about/resources/math/math_and_images.html
- NIMAS XML exemplar 4 at <http://nimas.cast.org/center/exemplars/exemplar4.html>

3. The publishers are asserting that “print instructional materials” as defined by 20 U.S.C. § 1474(e)(3)(C) includes only printed textbooks and related core material but does not include textbooks that were not written for sale in K-12 such as higher education textbooks and trade books as well as supplementals, teacher editions and the like. Is this correct?

Under sections 612(a)(23) and 613(a)(6) of IDEA, SEAs/LEAs have the responsibility to provide all “instructional materials” in accessible formats to blind and other print disabled persons in a timely manner. This responsibility would extend to all instructional materials used in courses that SEAs/LEAs offer for elementary school or secondary school credit, even if they are provided by another entity through a contract or other arrangement with the SEA/LEA.

The NIMAC authority in section 674(e) of IDEA is limited to “print instructional materials,” which is defined in section 674(e)(3)(C) as “[p]rinted 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 State educational agency or local educational agency for use by students in the classroom.” The term “print instructional materials” is narrower than the term “instructional materials” as used in sections 612(a)(23) and 613(a)(6) because the definition does not include textbooks published primarily for use in postsecondary instruction. The term also does not include trade books and supplemental materials unless they are published primarily for use in elementary and secondary school instruction and are required by an SEA or LEA for use by students in the classroom.

Whether publishers are required to create NIMAS files for textbooks that are used in advanced placement classrooms and send those files to the NIMAC must be assessed on a case-by-case basis. The determining factor is not where the class is taken or what kind of credit is given. Rather, the definition of the term "print instructional materials" must be applied, and the determining factor is whether the textbook was published primarily for use in secondary school instruction and is required by an SEA or LEA for use by students in the classroom. Finally, teacher editions are not covered because the NIMAC is limited to providing accessible materials only to blind or other persons with print disabilities, which is clearly defined in section 674(e)(3)(A) to mean children served under IDEA who also qualify under An Act to Provide Books to the Adult Blind of March 3, 1931.

Based upon the foregoing, while SEAs/LEAs may use instructional materials that are not covered by the NIMAC, including materials published primarily for use in postsecondary education, they have an obligation under sections 612(a)(23) and 613(a)(6) to ensure that all instructional materials are provided in accessible formats to blind and other print disabled persons.

Again, we appreciate your inquiry about clarifying these implementation issues. These are important points as New Mexico, as well as other states, work to implement the requirements that assure that students with print disabilities have accessible instructional materials. Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If further clarification is needed, don't hesitate to contact our NIMAS Technical Assistance Center Project Director, Mr. Chuck Hitchcock, at chitchcock@cast.org, Dr. Bonnie Jones, NIMAS content expert at OSEP, at bonnie.jones@ed.gov, or the NIMAS website at <http://nimas.cast.org>. Please advise Dr. Jones or Mr. Hitchcock if you have further need for clarification or technical assistance.

Sincerely,



William W. Knudsen
Deputy Assistant Secretary

Cc: John Copenhaver, Director, Mountain Plains Regional Resource Center
Gilbert Perea, Assistant Secretary, New Mexico Program Support and Student
Transportation Division
Sally Wilkinson, State Director, New Mexico Instructional Materials Bureau