QUESTIONS AND ANSWERS
ON THE
NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD (NIMAS)

Revised August 2010

Regulations for Part B of the *Individuals with Disabilities Education Act* (*IDEA*) were published in the *Federal Register* on August 14, 2006, and became effective on October 13, 2006. Additional regulations were published on December 1, 2008 and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide states, state educational agencies (SEAs), local educational agencies (LEAs), and other interested parties with information to facilitate adoption of the National Instructional Materials Accessibility Standard (NIMAS) and coordination with the National Instructional Materials Access Center (NIMAC), a national repository for NIMAS files received from publishers, SEAs, and LEAs. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

This Q&A document supersedes the Department's guidance, entitled *Questions and Answers on the National Instructional Materials Accessibility Standard (NIMAS)*, issued in January 2007.

The secretary established NIMAS pursuant to sections 612(a)(23)(A) and 674(e)(4) of the *IDEA*. The standard, a file set that includes all information typically prepared for publishing, including metadata, images, and text, is intended for use in the production of accessible instructional materials for students who are blind or who have other print disabilities. All states must adopt NIMAS; however, SEAs and LEAs may choose whether or not to coordinate with the NIMAC.

Adopting and implementing NIMAS and coordinating with the NIMAC is a very complex process, is developmental in nature, and involves two federal laws (Parts B and D of the

IDEA, and the Chafee Amendment of 1996 of the *Copyright Act*). The Office of Special Education Programs funds two national centers, the NIMAS Development Center and the NIMAS Technical Assistance (TA) Center, to help facilitate the timely implementation of NIMAS within states.

Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of the *IDEA* and its implementing regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the *IDEA* and its implementing regulations. The *IDEA*, its implementing regulations, and other important documents related to the *IDEA* and the regulations are found at http://*IDEA*.ed.gov.

If you are interested in commenting on this guidance, please e-mail your comments to OSERSguidancecomments@ed.gov and include NIMAS in the subject of your e-mail or write us at the following address:

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A. NIMAS

Authority: The requirements for NIMAS are found in the regulations at 34 CFR §300.172, §300.210, and Appendix C to Part 300.

Question A-1: What is the definition of NIMAS?

Answer: NIMAS is the National Instructional Materials Accessibility Standard. (For further background on NIMAS, please see the introduction at the beginning of this Q&A.) NIMAS means the standard established by the secretary of education to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats. "Specialized formats" (a) means Braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities; and (b) 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.

Question A-2: What does it mean to coordinate with the NIMAC?

Answer: The NIMAC is the National Instructional Materials Access Center. (For further background on the NIMAC, please see the introduction at the beginning of this Q&A.) Coordinating with the NIMAC means that the SEA or LEA signed a user agreement with the NIMAC, is directing publishers to provide NIMAS files of materials they order to the NIMAC, and has designated authorized users who will have access to the NIMAC database. These authorized users can search the NIMAC database and directly download the NIMAS files they need to convert into specialized formats for use by blind or other persons with print disabilities in elementary and secondary schools.

Question A-3: Which students are eligible to receive specialized formats from NIMAS-derived files through the NIMAC? May a file for an eligible student also be used for other students who may benefit from its use?

Answer: Only blind or other persons with print disabilities in elementary schools and secondary schools, under section 674(e)(2) and (3) of the *IDEA*, are eligible to receive specialized formats from NIMAS-derived files through the NIMAC. "Blind or other persons with print disabilities" means children served under the *IDEA* who 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. If students are eligible to

receive specialized formats from NIMAS-derived files through the NIMAC, an SEA or LEA can use the specialized format already derived from NIMAS file sets for other NIMAS-eligible students. SEAs and LEAs may not share these specialized formats with students who are not eligible to receive specialized formats from NIMAS-derived files through the NIMAC. This is consistent with the Chafee Amendment to the *Copyright Act* (17 U.S.C. §121). SEAs are still required to ensure that children with disabilities who need instructional materials in accessible formats, but are not eligible to receive educational materials produced in accessible formats from NIMAS files obtained from the NIMAC, receive those instructional materials in a timely manner (34 CFR §300.172(a)). In order to comply with this requirement, SEAs and LEAs must obtain the materials from other sources.

Question A-4: Are students who receive services under Section 504 of the *Rehabilitation Act* eligible to receive specialized formats from NIMAS-derived files through the NIMAC?

Answer: No, students who receive services under Section 504 are not eligible to receive accessible materials produced from NIMAS files obtained through the NIMAC unless they are otherwise eligible to receive these materials under the *IDEA*. Section 674(e)(2) of the *IDEA* states that the NIMAC must 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. "Blind or other persons with print disabilities" is defined in section 674(e)(3)(A) of the *IDEA* as children served under the *IDEA* and who may qualify in accordance with "An Act To Provide Books for the Adult Blind," approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats. Thus, students who receive services under Section 504 of the *Rehabilitation Act* are not eligible to receive educational materials produced in specialized formats from NIMAS files obtained through the NIMAC unless they are otherwise eligible to receive these materials under the *IDEA*. However, SEAs and LEAs are required to provide accessible materials to all students who need them, regardless of whether or not they qualify for accessible materials produced from NIMAS-derived files (34 CFR §300.172(b)(3)).

Question A-5: Who has responsibility for determining whether particular students are eligible to receive accessible materials produced through NIMAS files obtained through the NIMAC? Are LEAs required to pay for additional medical certification to verify that a student's print disabilities are organic in nature?

Answer: Section 674(e)(2)(B) of the *IDEA* provides that educational materials produced from NIMAS files obtained through the NIMAC may only be provided to blind or other persons with print disabilities in elementary and secondary schools. Section 674(e)(3)(A) of the *IDEA* defines the term "blind or other persons with disabilities" as children served under *IDEA* who qualify under the Library of Congress regulations implementing the Act to Provide Books for the Adult Blind. These regulations specify (a) those students who are eligible to receive educational materials in specialized formats produced from NIMAS files received from the NIMAC (36 CFR §701.6(b)(1)); and (b) the competent authorities who can certify a student as eligible to use specialized formats (36 CFR §701.6(b)(2)).

In the case of an individual who has a reading disability from organic dysfunction, the Library of Congress regulations define competent authority as doctors of medicine who may consult with colleagues in associated disciplines. In the case of an individual who is blind, has a visual disability, or has physical limitations, other medical professionals and school officials such as social workers and counselors are included among those who are competent authorities. Because SEAs and LEAs are responsible for providing a free appropriate public education to all children with disabilities and for ensuring that children who need instructional materials in accessible formats are provided these materials in a timely fashion, LEAs have the responsibility, including the assumption of any associated costs, to obtain the appropriate certification for the students (34 CFR §300.101, 300.172(b)(4), and 300.201; 20 U.S.C. 1412(a)(1)(A)). The Library of Congress regulations for certifying students who are blind or who have print disabilities can be found on footnote 2 of the OSEP Topical Brief on NIMAS. This topical brief is available at http://*IDEA*.ed.gov/frontend_dev.php/object/fileDownload/model/TopicalBrief/field/WordFile/primary_key/12.

Question A-6: Can programs that serve 3 to 5 year old children pursuant to section 619 of Part B of the *IDEA* use NIMAS file sets and the NIMAC repository?

Answer: It would depend on the state's definition of elementary school. If a state considers 3 to 5 year olds who are blind or have other print disabilities

and are attending preschool programs to be attending elementary schools, then those students are eligible to use materials produced in specialized formats from NIMAS files received from the NIMAC. NIMAS file sets can be used to make specialized formats only for use in elementary and secondary classroom instruction for students who are blind or who have print disabilities.

Question A-7: Can NIMAS files be sent to individual students so that they can manipulate them and use them, for example, on personal digital assistants (PDAs)?

Answer: NIMAS file sets are source files and are designed to be converted by software or accessible media producers (AMPs) into specialized formats (e.g., Braille, audio text, digital format or large print) for eligible students. While NIMAS file sets cannot be sent directly to students, an SEA or LEA could convert a NIMAS file set into a specialized format and place the specialized format onto an eligible student's PDA. However, each SEA or LEA must take appropriate steps under applicable copyright laws to ensure that only students who are blind or have print disabilities and are in elementary or secondary school receive these specialized formats.

Question A-8: Instructional materials such as textbooks are typically acquired through textbook purchasing offices at the SEA or LEA level. Are these offices required to comply with NIMAS requirements in their purchase of textbooks and other instructional materials?

Answer: If an SEA chooses to coordinate with the NIMAC, 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: 1) 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; or 2) "purchase instructional materials from the publisher that are produced in or may be rendered in specialized formats." (See 34 CFR §300.172(c) and 300.210(a).) The SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children who receive instructional materials (34 CFR §300.172(b)(4)). Therefore, SEAs should inform all relevant offices and parties within the State, including LEAs, of their obligation to meet the requirements for access to instructional materials. For example, SEAs and LEAs should

communicate these requirements to textbook adoption committees, as well as procurement and contracting offices.

Question A-9: Are SEAs and LEAs in outlying areas eligible to coordinate with the NIMAC?

Answer: Yes, SEAs and LEAs in outlying areas (i.e., the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) are eligible to coordinate with the NIMAC.

Question A-10: The Department of Defense Education Activity (DODEA) is required to comply with the *IDEA*. Is DODEA eligible to access the NIMAC database to use NIMAS file sets?

Answer: Yes. If the DODEA decides to coordinate with the NIMAC, it will designate authorized users who may access NIMAS files. The authorized users will, in turn, convert the NIMAS file sets or designate AMPs to convert NIMAS file sets into specialized formats for eligible students in the DODEA.

Question A-11: What is the turnaround time from the NIMAC to the students receiving accessible materials?

Answer: After the NIMAC receives NIMAS file sets from the publisher, the file sets will be checked to confirm that they are valid and complete NIMAS files, and the files will be cataloged in a Web-based database. The NIMAC expects that, if the quality conforms to NIMAS, the files typically will be available almost immediately for authorized users and AMPs to download and convert into specialized formats. The time from the NIMAC download to the student receiving accessible materials will vary depending on the type of specialized format and the efficiency of the AMP.

Question A-12: What will it cost LEAs and SEAs to implement these provisions?

Answer: There is no cost to download NIMAS file sets from the NIMAC. The cost to produce the materials depends on the system that SEAs and LEAs choose to use to convert the NIMAS files into accessible formats and the type of accessible format desired. We anticipate that SEAs and LEAs with a developed infrastructure for conversion and delivery of accessible instructional materials will have limited, if any, implementation expenses.

Question A-13: If an SEA does not convert NIMAS file sets in-house and uses an accessible media producer for conversion purposes, will there be additional costs to the SEA or will licensing and contract agreements and fees be sufficient?

Answer: There is no cost to use the NIMAC or to obtain files through the NIMAC. However, if an SEA or LEA uses an AMP to convert NIMAS file sets, the SEA or LEA likely will incur some additional expense; those expenses would be determined in accordance with the contractual agreement between the agency and the AMP.

Question A-14: How does NIMAS relate to curricula that are delivered in an on-line platform?

Answer: NIMAS is a source file for converting print instructional materials into specialized formats and does not apply to on-line material.

Question A-15: Can NIMAS file sets be used to produce standardized assessments in specialized formats?

Answer: No. Standardized assessments do not fall within the definition of print instructional materials as that term is defined in section 674(e)(3)(C) of the *IDEA*.

Question A-16: Under what circumstances will foreign language textbooks be available in NIMAS and through the NIMAC?

Answer: The *IDEA* specifies that NIMAS applies to print instructional materials, which is defined in section 674(e)(3)(C) of the *IDEA* as 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 an SEA or LEA for use by students in the classroom. Thus, all foreign language textbooks that fall within the definition of “print instructional materials” are subject to the NIMAS. This applies both to textbooks for foreign language classes and textbooks translated into a foreign language for use by students with limited English proficiency.

Question A-17: Can the NIMAC accept the files of books that are written for general usage (trade books), such as novels, given that the *IDEA* only authorizes access to materials written and published primarily for use in elementary school and secondary school?

Answer: Yes. It is consistent with the *IDEA* for the NIMAC to accept trade book files from publishers, when they are bundled with other instructional materials for use in the classroom, as required by the state or LEA approved curriculum. This means that publishers must provide a textbook or supplementary guide that identifies how each trade book in the bundle is tied into the curriculum required by an SEA or LEA for use by students in the classroom. This must be done by substantially linking each trade book to analysis, questions, study guides, and/or other curriculum materials contained in the textbook or supplementary guide

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Question A-18: Will SEAs and LEAs be allowed to access the graphic parts of texts? Are they required to obtain permission from publishers, the artist, or the photographer?

Answer: NIMAS file sets include some specifications for graphics. Separate permissions are not necessary if the publisher submits NIMAS files to the NIMAC for eligible students. These uses are authorized under section 674(e) of the *IDEA*, which is consistent with the Chafee Amendment to the *Copyright Act* (17 U.S.C. 121). However, portions of mathematics, science, geography, and other textbooks that do not use literary Braille are not fully accessible using NIMAS because translation software that convert graphics and pictures accurately into accessible formats of graphical material do not currently exist. To the extent that the NIMAS files do not cover the graphs, pictures, and other visual elements in the textbooks, AMPs may have to use alternative measures to produce a completely accessible version of a textbook. However, this responsibility should be addressed in the agreement between the SEA or LEA and the AMP.

Question A-19: Is there a standard style guide for NIMAS? If so, where is it available?

Answer: The NIMAS Technical Assistance Center has developed a best practices resource with exemplars and a style guide. Exemplars are located at: http://nimas.cast.org/center/exemplars/ and the guide for creating NIMAS files is at: http://nimas.cast.org/about/resources/creating_nimas.html

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Question A-20: Whom can I contact in my state about NIMAS and coordination with NIMAC?

Answer: The NIMAS TA Center and the NIMAC have worked collaboratively to help states identify a NIMAS point of contact within each state. These contacts, along with contact information, are listed by state at http://nimas.cast.org/about/resources/nimas_nimac_contacts.html. These designated NIMAS/NIMAC contacts are a critical link between the states and the national centers.