

# The AIMing for Achievement Series:

## What Educators and Families Need to Know about Accessible Instructional Materials

### *Part One: Introduction and Legal Context*

**By Joy Smiley Zabala and Diana Carl**

Both the Elementary and Secondary Education Act (currently called NCLB) and the Individuals with Disabilities Education Improvement Act (IDEA 2004) include compelling requirements for state and local education agencies (SEAs and LEAs) to ensure that all students, including those with disabilities, receive the supports and services they need to access, participate and achieve in the general educational curriculum.

Unfortunately, the printed textbooks and instructional materials used in the general education curriculum are not useful to many students with disabilities. The very materials that are supposed to support learning actually create barriers to learning for students whose disabilities result in not being able to gain or use the information contained in typical textbooks and related printed instructional materials. These students require another way to gain the information needed to participate and achieve in the general curriculum. For many students, this need can be addressed by providing the students with the identical information in one or more specialized formats - Braille, large print, audio and/or digital. When specialized formats and supports for use are well-matched to a student's individual needs and abilities, the result can mean the difference between exclusion and achievement.

Recognizing both the statutory and practical importance of ensuring that all students have instructional materials in formats that are useful to them, the Office of Special Education Programs (OSEP) of the United States Department of Education has funded several projects that, along with others funded directly by Congress, provide

products and services designed to help SEAs and LEAs improve the quality, availability and timely delivery of accessible instructional materials to K-12 students with disabilities that diminish the usefulness of traditional printed materials. Two of the current projects – the NIMAS Development Center and the National Center on Accessible Instructional Materials Center – were awarded to CAST, a nonprofit research and development organization founded in 1984 as the Center for Applied Special Technology. The mission of CAST is to expand learning opportunities for all students through Universal Design for Learning and related initiatives.

The work of the current projects builds on the work begun, lessons learned and products developed by previous NIMAS/AIM projects at CAST – the initial NIMAS Development Center, the NIMAS Technical Assistance Center and the AIM Consortium. The work of these three projects is integrated into the continuing work of the National Center for Accessible Instructional Materials (AIM Center), which provides knowledge development, technical assistance and leadership to state and local education agencies, as well as to other stakeholders in the massive collaborative effort involved in getting high quality accessible materials into the hands of students who need them.

This article is the first in a series in which the work of the AIM Center, along with that of the NIMAS Center and the previous AIM Consortium, will be discussed. The focus is on the legal issues and definitions related to accessible instructional materials (AIM). Future articles in the series will highlight the array of supports, services and tools that are



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available to all states and territories, primarily via the AIM Center Web site at <http://aim.cast.org> including, but not limited to, those developed by the AIM Consortium to assist in the identification of a student's need for AIM, the selection, acquisition and use of AIM.

## THE LEGAL CONTEXT OF ACCESSIBLE INSTRUCTIONAL MATERIALS

IDEA 2004 requires state educational agencies (SEAs) and local education agencies (LEAs) to ensure that textbooks and related printed materials are provided in specialized formats to students with print disabilities, when needed, in a timely manner (C.F.R. Section 300.172). IDEA 2004 also established the National Instructional Materials Accessibility Standard (NIMAS) and the National Instructional Materials Access Center (NIMAC).

While the intent that all students have instructional materials in formats that are useful to them is clear, educators, families and other stakeholders are often unclear about actions to take and also have questions about what some of the terms mean. In this section, frequently asked questions about actions required by the Final Regulations and about the language will be explored.

## REQUIREMENTS IN THE FINAL REGULATIONS

What do the Final Regulations of IDEA 2004 require SEAs and LEAs to do?

In order to meet its responsibility to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must:

1. 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 receive instructional materials.
2. Adopt the NIMAS 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.
3. Establish a state definition of "timely manner."
4. Choose whether or not to coordinate with the NIMAC.

## WHAT IS NIMAS?

The National Instructional Materials Accessibility Standard, or NIMAS, is a standard file format mandated in IDEA 2004 for textbooks and related printed core instructional materials. A NIMAS conformant source file is not student ready but must be converted into

one of the specialized formats (i.e., Braille, audio, digital, large print) for student use.

## WHAT IS THE NIMAC?

The National Instructional Materials Access Center (NIMAC) is the national repository that validates and distributes NIMAS-compliant source files of textbooks and related core materials provided by publishers, either proactively or when required to do so as a part of an SEA or LEA purchasing contract. Source files from the NIMAC are not student-ready, but each single source file can be used to create student-ready materials in all four specialized formats. Materials created from source files from the NIMAC can only be used by students who are both served as a student with disabilities under IDEA and certified by a competent authority as having a print disability as defined by copyright statute. Unless a student meets BOTH of these criteria, the NIMAC cannot be used as the source of materials that are provided to the student. The NIMAC is housed at the American Printing House for the Blind, Inc. (APH) in Louisville, Kentucky.

Additional information on the NIMAC is available on the NIMAC Web site at <http://www.nimac.us/> and on the AIM Center Web site at <http://aim.cast.org> in a FAQ about NIMAS and NIMAC.

What has to be done if a state chooses to coordinate with the NIMAC?

If an SEA chooses to coordinate with the NIMAC, the SEA must enter into a written contract with the publisher of the print instructional materials as a part of any print instructional materials adoption process, procurement contract or other practice or instrument used for purchase of print instructional materials:

- Require the publisher to prepare and provide to the NIMAC electronic files containing the contents of the print instructional materials using the NIMAS, on or before delivery of the print instructional materials;
- Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

There is no discernable downside for states that elect to coordinate with the NIMAC, and there are compelling reasons to do so. First, there is no charge for SEAs and LEAs to coordinate with the NIMAC and no charge for gaining access to the files according to procedures established by the NIMAC. Second, and possibly most important, as the number and quality of source files in the NIMAC have increased, these files form a primary means for producing instructional materials in specialized formats for those students who are served under IDEA 2004 and have been certified as having a print disability as defined by copyright statute.

## WHAT IF AN SEA CHOOSES NOT TO COORDINATE WITH THE NIMAC?

If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary of Education (currently Arne Duncan) that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

Not surprisingly, all 50 states and some territories have coordinated with the NIMAC.

Are these requirements limited to providing accessible instructional materials to students served under IDEA 2004 who also have a print disability as defined by copyright statute?

Nothing in the 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 C.F.R. Section 300.172(e) (1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

## HOW IS ASSISTIVE TECHNOLOGY MENTIONED IN SECTION 300.172?

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

By what authority are the requirements Section 300.172 authorized?

Authority: 20 U.S.C. 1412(a)(23), 1474(e)

Now, about those other terms

## WHAT ARE PRINT INSTRUCTIONAL MATERIALS?

IDEA 2004 defines "print instructional materials" 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 a state education agency or local education agency for use by students in a classroom" (IDEA [674(e)(3)(C)]).

## WHAT IS MEANT BY THE TERM "RELATED PRINTED CORE MATERIALS?"

As stated above, these materials are "written and published primarily for use in elementary and secondary school instruction and are required by a state education agency or local education agency for use by students in a classroom." They are generally thought to be the materials that are published and packaged as accompaniments to a textbook (e.g., workbook, reproducible supplementary materials, etc.) and included in the contract with the publisher. (IDEA [674(e)(3)(C)])

## WHAT IS A PRINT DISABILITY?

The Library of Congress regulations (36 CFR 701.10(b)(1)) (<http://www.loc.gov/nls/sec701.html>) 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:

- "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."

- "Persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material."

- "Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations."

- "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."

## WHO IS A COMPETENT AUTHORITY?

Based on the Library of Congress regulations (36 CFR 701.10(b)(1)) related to the Act to Provide Books for the Adult Blind (approved March 3, 1931, 2 U.S.C. 135a), a "competent authority" is defined as follows:

- 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; and professional staff of hospitals, institutions and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers and superintendents). In the absence of any of these, certification may be made by professional librarians or by any persons whose competence under specific circumstances is acceptable to the Library of Congress.

- In the case of reading disability from organic dysfunction, competent authority is defined as doctors of medicine who may consult with colleagues in associated disciplines.

## WHAT IS THE CHAFEE AMENDMENT TO THE COPYRIGHT LAW?

- The 1996 Chafee Amendment to the Copyright Law, Public Law 104-197, adds Section 121, establishing an exception to copyright infringement for the reproduction

of works for use by the blind or other persons with print disabilities. The definition of blind and other persons with disabilities refers, as does IDEA 2004, to the definition in the Act to Provide Books for the Adult Blind approved March 3, 1931. For more detailed information on the Copyright Law and the Chafee Amendment, refer to the National Library Service's NLS Factsheets: Copyright Law Amendment, 1996 (<http://www.loc.gov/nls/reference/factsheets/copyright.html>).

## WHAT ARE THE SPECIALIZED FORMATS?

There are four specialized formats included in IDEA - Braille, large print, audio and digital - which are described below. These represent the array of student-ready formats that can be produced in several ways, including from a single XML source file that has been developed in accordance with the technical specifications of the NIMAS.

### WHAT IS BRAILLE?

Braille is a tactile system of reading and writing made up of raised dot patterns for letters, numbers and punctuation marks, used by people with visual impairments. Braille may either be embossed (a permanent printed document) or refreshable (electronically generated and accessed via a Braille display device).

### WHAT IS LARGE PRINT?

Large print is generally defined as print that is larger than the print size commonly used by the general population (8-12 points in size). Some use a guideline for defining large print as 18 points in size or larger. A document rendered in the large print format usually has more white space and may or may not look like the original document but contains the same information. Large print may be printed on pages that are the same size as a standard textbook or on pages of a larger size.

### WHAT IS AUDIO?

The audio format renders the content as speech to which the student listens. The audio format includes recorded human speech and synthesized electronic speech.

### WHAT IS DIGITAL FORMAT?

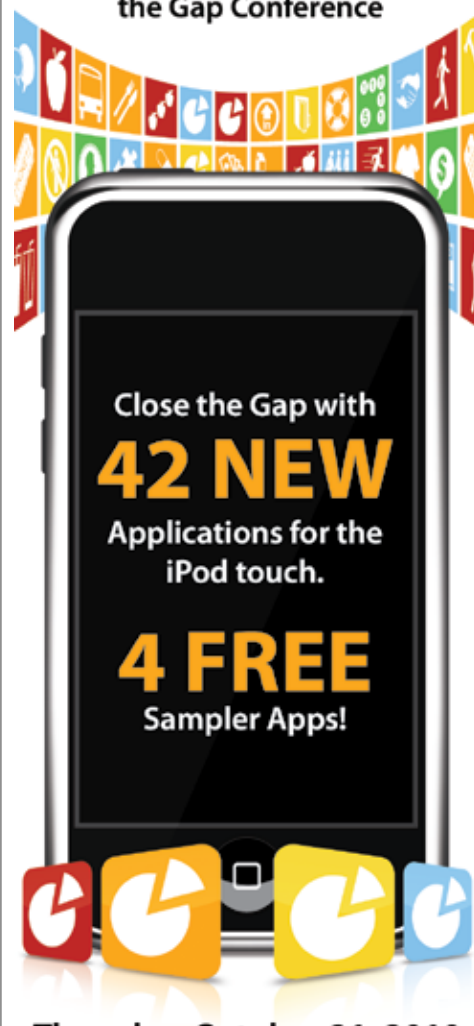
The digital format delivers electronic text and graphics that are rendered on a computer or some other device. This format has both visual and audio output that may be displayed individually or together. Electronic text can be changed in many ways (e.g., size, contrast, read aloud, etc.) to accommodate the needs and preferences of the user. How the material is presented to the user depends

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### WHAT DOES "IN A TIMELY MANNER" MEAN?

IDEA 2004 requires each state to define what it means in their state. Generally, it means "at the same time" that other students receive their core instructional materials in print format. The gold standard for timely manner is at the same time that other students receive their print materials. So, if other students get their textbooks the first day of school, then a student using an audio version should get the audio version of the same textbook on the same day. What many states have done is to include a clause related to extenuating circumstances. For example, if a student moves into the district and needs a Braille textbook, it might not be available. But, any time there is a delay in getting those materials then there would be the understanding that the delay would be addressed so it did not occur on a regular basis.

### SO, WHAT DO EDUCATORS AND FAMILIES NEED TO DO?

Those of us who have worked in assistive technology for a long time found out that the most efficient and effective way to consider

the needs for assistive technology is through a decision-making process. And really, the same holds true for AIM.

Basically, there are four steps that teams must take in order to ensure that students who need materials in these formats have them when needed for educational participation and achievement. Those steps include:

1. Establish need for instructional materials in specialized formats
2. Select specialized format(s) needed by the student for educational participation and achievement
3. Commence SEA and/or LEA-defined steps to acquire needed formats in a timely manner
4. Determine supports needed for effective use for educational participation and achievement.

Part Two of the AIMing for Achievement Series will focus on the decision-making process and look closely at how each of the steps requires good thinking to determine whether or not the student may need AIM; then, when they are needed, determining which formats are appropriate and the sources from which to acquire the formats. Finally, the team will think about the supports and services that will be needed for the student

to use the formats effectively for participation and achievement.

Included in Part Two will be an introduction to several tools developed by the AIM Consortium that support teams with decision-making at every step of the process.

### IN THE MEANTIME

Check out the Web site of the AIM Center at <http://aim.cast.org>. The AIM Center provides knowledge development, technical assistance and leadership to SEAs and LEAs, as well as to educators, families and others involved in the massive collaborative effort involved in getting high quality accessible materials into the hands of students who need them. The suite of tools produced by the AIM Consortium is among the large and growing resources – including a robust series of informative Webinars - available free of charge to all states and interested parties on the AIM Center Web site. A detailed "guided tour" of the AIM Center Web site will take place in a future part of the AIMing for Achievement Series. ■

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