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DEPARTMENT OF EDUCATION

34 CFR Part 300

[Docket ID ED-2019-OSERS-0111]

Assistance to States for the Education of Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed interpretation.

SUMMARY: The Individuals with Disabilities Education Act (IDEA) established the National Instructional Materials Access Center (NIMAC) in 2004 to assist State educational agencies (SEAs) and local educational agencies (LEAs) to produce accessible instructional materials for students with print disabilities. The U.S. Department of Education (Department) issues this notice of proposed interpretation to clarify the definition of "print instructional materials" in section 674(e)(3)(C) of IDEA to include digital instructional materials. This means that the NIMAC would accept digital instructional materials.

DATES: We must receive your comments on or before [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery,

or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How to use Regulations.gov."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about this proposed interpretation, address them to Tara Courchaine, U.S. Department of Education, 400 Maryland Avenue, SW, room 5054E, Potomac Center Plaza, Washington, DC 20202-5076.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Tara Courchaine, U.S. Department of Education, 400 Maryland Avenue, SW, room

5054E, Potomac Center Plaza, Washington, DC 20202-5076.

Telephone: (202) 245-6462. Email:

Tara.Courchaine@ed.gov.

SUPPLEMENTARY INFORMATION:

Invitation to Comment:

We invite you to submit comments on this notice of proposed interpretation. See ADDRESSES for instructions on how to submit comments.

During and after the comment period, you may inspect all public comments about this proposed interpretation by accessing Regulations.gov. You may also inspect the comments in person in room 3W104, 400 Maryland Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Assistance to Individuals with Disabilities in Reviewing

the Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public record for this document. If you want to schedule an appointment for this type of aid,

please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Background

The NIMAC was established under IDEA in 2004 to assist SEAs and LEAs in the production of accessible instructional materials for students with print disabilities. While discussing proposed changes to IDEA in the Senate, Senator Dodd, a co-sponsor of the bill, commented on the reason for establishing NIMAC stating "...these important provisions will greatly aid blind and print disabled students by ensuring they receive their textbooks and other instructional materials in the formats they require, such as Braille, at the same time as their sighted peers." 108 Cong. Rec. S11, 656 (April 29, 2003). Similarly, the House report notes that, "...the provision is intended to provide students who are blind or have other print disabilities with more timely access to instructional materials used in elementary and secondary schools." H.R. Rep. No. 108-77, at 98 (April 29, 2003). Within the legislation, the scope and duties of the NIMAC as the searchable online national file repository of K-12 print textbooks in the XML-based National Instructional Materials Accessibility Standard (NIMAS) format are clearly defined, as are the key definitions framing its operations.

These duties are:

1. 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, SEAs, and LEAs.

2. 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.

3. 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 IDEA. (34 CFR 300.172(e)(1)(ii); 20 U.S.C. 1474(e)(2)(A), (B), (C))

Under section 674(e)(3)(C) of IDEA, 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." During the 15 years since the NIMAS was created by Federal statute, the use of digital

educational materials¹ as a core component of elementary and secondary curriculum has grown significantly. Currently, the majority of States have digital learning plans and digital learning standards. In addition, State leaders have demonstrated a commitment to digital learning and the use of digital materials and to support personalized learning that meets the needs of all students.² In fact, in 2014 Florida developed a five-year plan that requires all schools to move to digital classrooms.³ In a recent United States survey, 75 percent of classroom teachers expected digital content to replace traditional print textbooks by 2026.⁴

Currently, IDEA does not specifically address the inclusion or use of digital instructional materials, which were not as common when the law was originally enacted. At this time NIMAC does not accept digital instructional materials. This exclusion of digital materials unnecessarily and inappropriately limits access to such

¹ For the purpose of this notice of interpretation, the Department views "digital educational materials" as "digital instructional materials."

² State Educational Technology Directors Association (SETDA). (2019). State K12 Instructional Materials Leadership Trends Snapshot. See https://www.setda.org/master/wp-content/uploads/2019/03/DMAPS_snapshot_3.26.19.pdf.

³ Florida's Digital Classrooms Program. See <http://www.fl DOE.org/core/fileparse.php/5658/urlt/0097843-fdoedigitalclassroomsplan.pdf>.

⁴ Harpur, Paul. (2017). Discrimination, copyright and equality: Opening the e-book for the print disabled. Retrieved from <https://ssrn.com/abstract=2977629>.

materials for students who are blind or visually impaired. The exclusion of digital instructional materials from the NIMAC also forces teachers to retrofit materials or provide alternate materials that are not equivalent to those available to peers without disabilities. Additionally, these retrofitted materials may not be provided to students in a timely manner or are of inconsistent quality. Consequently, students who are blind or visually impaired are potentially denied equal educational opportunity, comparable access to materials, and access to information in a timely manner by excluding digital instructional materials from the definition of print instructional materials. This is especially true for students in Pre-K-3, who require embossed braille to ensure a solid foundation in early literacy, as well as for older students who use braille (embossed or digital) to access academic content.

Digitally formatted materials accompanied by technology have the potential to facilitate learning for all students. However, such materials will benefit students who are blind, visually impaired, or have other

print disabilities only if they are available in accessible formats.⁵

Proposed Interpretation

Given the purpose of NIMAC, the trend toward digital instructional materials and resources, and the silence of the statute on the acceptance of digital files, the Department proposes to interpret the phrase “printed textbooks and related printed core materials” referred to in the definition of “print instructional materials” in section 674(e) (3) (C) of IDEA to include digital instructional materials that comply with NIMAS, because that is the primary medium through which many textbooks and core materials are now printed. The Department considers digital materials submitted to NIMAC to be in digital print format, which falls under the larger category of “print” and is consistent with the statutory language of section 674(e) (3) (C) of IDEA. The Department believes this interpretation to be aligned with the purpose of the statute, which is to provide timely instructional materials to students who are blind or have other print disabilities. Therefore, under this interpretation, NIMAC would be able

⁵ Harpur, Paul. (2017). Discrimination, copyright and equality: Opening the e-book for the print disabled. Retrieved from <https://ssrn.com/abstract=2977629>.

to accept digital instructional materials submitted in a valid XML-based NIMAS format.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

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Johnny W. Collett,
*Assistant Secretary for Special
Education and Rehabilitative
Services.*

[FR Doc. 2019-22888 Filed: 10/18/2019 8:45 am; Publication Date: 10/21/2019]