

15 November 2021

Dear Prospective Proposer,

The National Instructional Materials Access Center (NIMAC) at the American Printing House for the Blind (APH) invites all qualified researchers to submit a proposal to participate in a competitive process to provide independent research into Digital Instructional Materials in K-12. The goal of this work is to provide findings that will inform future technical assistance in support of NIMAS and meeting the accessibility needs of students with visual impairments and print disabilities in the classroom.

**Proposals will be accepted through January 3, 2022.**

The formal Request for Services follows. Key items in the RFP can be found in these sections:

* [Project Timetable](#_2.1.1_Timetable)
* [SUPPLEMENT A - APH’S Information and Requirements](#_SUPPLEMENT_A_-)
* [Scope and Deliverables](#_1.4_APH’S_REQUIREMENTS)
* [Pricing Schedule](#_Pricing_Schedule)
* [SUPPLEMENT B – Submission Form](#_Supplement_B_–)
* [Appendix A: The Notice of Interpretation](#_Appendix_A:_The)
* [Appendix B: Research Questions](#_Appendix_B:_Research)

Please direct any questions regarding this opportunity to me at the email address below by November 29, 2021.

All questions will be answered via a single response to questioners and also posted on the NIMAC website (<https://nimac.us>) no later than December 3, 2021.

Please feel free to share this opportunity with colleagues. Thank you!

Kind regards,

Nicole

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| **­­­**American Printing House | **Nicole Gaines***Director of Resource Services & NIMAC*502.899.23381839 Frankfort Avenue • Louisville, KY 40206[www.nimac.us](http://www.nimac.us/) • nimac@aph.org |

# REQUEST FOR SERVICES – Digital Instructional Materials Research

## 1.1 Invitation to Submit

This Request for Services (“RFS”) is an open invitation to all qualified vendors to put forward a submission for the provision of services on behalf of the National Instructional Materials Access Center (NIMAC), located at the American Printing House for the Blind (APH). In responding to this RFS, you will be deemed to have taken into account all of the provisions of the RFS.

## 1.2 The Services

Information about APH and its requirements are set out in Supplement A (APH’s Information and Requirements).

## 1.3 Type of Contract

The selected Vendor will be expected to enter into a Statement of Work.

## 1.4 Definitions

Unless otherwise specified in this RFS, capitalized words and phrases have the meanings set out in the Master Agreement.

**"Business Day"** means any working day, Monday to Friday inclusive, excluding APH holidays, namely: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Friday following; Christmas Eve and Christmas Day.

 **“Vendor”** means the applicant submitting the response to this RFS.

**“Statement of Work”** means the formal contract established between APH and a Vendor to provide the services described in this RFS.

## 1.5 Interpretation

All references to days in this RFS and in your submission are to Business Days, unless expressly set out otherwise.

## 2.1 GENERAL INFORMATION AND INSTRUCTIONS

### 2.1.1 Timetable

The RFS timetable is tentative only and may be changed by APH in its sole discretion. The following is the schedule for this RFS:

* **Issue Date of RFS: 11/15/2021**
* **Submission Deadline: 1/3/2022**
* **Anticipated Start Date: 1/17/2022**

### 2.1.2 Parties Shall Bear Their Own Costs

The parties will bear their own costs associated with or incurred through this RFS process, including any costs arising out of or incurred in: (a) the preparation and issuance of this RFS; (b) the preparation and making of a submission; or (c) the conduct of interviews, negotiations or other activities related to this RFS process.

### 2.1.3 Inquiries

**All inquiries regarding this RFS should be directed by email (no phone calls) to APH Representative by 11/29/2021.** APH will provide one response to all questions by **12/3/2021.** The response will be sent via email to all invited Vendors and also posted on the NIMAC website (<https://nimac.us>).

## 2.2 VENDOR SUBMISSIONS

### 2.2.1 Submissions Made Only in Prescribed Manner

To be eligible for consideration, you must be a Vendor that has completed and submitted the Submission Form set out in Supplement B (Submission Form), and thereby acknowledge your acceptance of terms and conditions of this RFS.

You must demonstrate in your submission that each proposed researcher has the knowledge, experience and all other qualifications for the proposed work, and will be able to provide the requested services. You must provide the APH with the opportunity to interview each proposed researcher and must not charge APH in connection with any interview.

You must also complete and submit the Pricing Schedule set out as Schedule A with the Submission Form.

#### Pricing Schedule

**Important note: You must complete the Pricing Schedule as a separate electronic file in your proposal submission.**

The Pricing Schedule must set out the full legal name of the Vendor; the full legal name of each staff person proposed to work on the project; the number of days proposed for each person to achieve completion of the proposed services within the timeframe specified by APH; the proposed Per Diem Rate for each person; a sub-total for each person, if applicable (number of days x Per Diem Rate); and a Ceiling Price that is not more than the sum of those sub-totals.

If applicable, you must identify all subcontractors that you propose to use, if any, and must also identify which researcher(s) are provided by which subcontractor.

You must specify the number of days required to complete the services.

The budget for this project is not to exceed $92,000.

You should provide your submission by email to APH Representative. All submissions submitted by Vendors by email to APH Representative are deemed received once the email has entered into the email inbox of APH Representative. Submissions are to be directed only to APH Representative. APH shall not be responsible for any email delivery issues or technical problems with regard to the submissions.

### 2.2.2 Amending or Withdrawing Submissions

You may withdraw or amend your submission at any time prior to the execution of a Statement of Work. However, such withdrawals or amendments may adversely impact your selection as a Vendor or eligibility to participate in future RFS processes.

### 2.2.3 Evaluation of Submissions

Submissions will be evaluated on the basis of the Vendor’s response to all information requested in this RFS, including but not limited to the proposed pricing, the qualifications of the researcher(s), and the quality of the proposed research plan outlined in the proposal. One (or more) successful Vendors may be selected to enter into a Statement of Work based on this RFS and the Vendors’ submissions.

## 2.3 EXECUTION OF AGREEMENT

### 2.3.1 Selection of Vendor

The Vendor selected by APH will be expected to enter into a Statement of Work. The agreement execution process is subject to the Terms of Reference set out in Section 2.6 and will not constitute a legally binding offer to enter into a contract on the part of the Vendor or APH before the execution of a Statement of Work.

### 2.3.2 Failure to Enter into a Statement of Work

The selected Vendor is expected to enter into a Statement of Work on or before the Anticipated Start Date set out in subsection 2.1.1. The failure to do so may result in the selection of another Vendor and may adversely impact the Vendor’s eligibility to participate in future RFS processes.

## 2.4 CONFLICT OF INTEREST

You must not engage in any Conflict of Interest. In this Request for Services, "Conflict of Interest" includes, but is not limited to, any situation or circumstance where:

(a) in relation to the Request for Services process, the Vendor has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including (i) having, or having access to, information in the preparation of its submission that is confidential to APH and not available to other Vendors; (ii) communicating with any person with a view to influencing preferred treatment in the Request for Services process; or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity or competitiveness of Request for Services process and render that process non-competitive and unfair; or

(b) in relation to the performance of its contractual obligations in a contract with APH, the Vendor’s other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

## 2.5 TERMS OF REFERENCE

These provisions apply to this RFS:

(a) this RFS process is not intended to create a formal, legally binding procurement process and shall not give rise to the legal rights or duties applied to a formal, legally binding procurement process; if you are the successful Vendor, you will be expected to enter into a Statement of Work with APH;

(b) neither party shall have the right to make claims against the other with respect to this RFS process, the selection of any Vendor, the failure to be selected to enter into a Statement of Work, or the failure to honor submissions prior to the execution of a Statement of Work;

(c) no legal relationship or obligation regarding the procurement of any services shall be created between any Vendor and APH prior to the execution of a Statement of Work;

(d) APH may make public the names of any or all Vendors; you consent to APH’s collection of the information as contemplated under this RFS for the uses contemplated under this RFS;

(e) APH may elect not to consider a Vendor whose submission contains misrepresentations or any inaccurate, misleading or incomplete information; APH may cancel this RFS process at any time;

(f) you agree to all of the terms of the procurement process set out in this RFS.

# SUPPLEMENT A - APH’S INFORMATION AND REQUIREMENTS

## 1.1 CONTACT INFORMATION

APH: National Instructional Materials Access Center, American Printing House for the Blind

APH Representative: Nicole Gaines

Title: Director, Resource Services & NIMAC

Email address: ngaines@aph.org

## 1.2 PROJECT INFORMATION

Project Name: National Instructional Materials Access Center

Service Category: Technical Assistance (TA) Research

**Project Start Date: January 17, 2022**

**Project End Date: September 30, 2022**

## 1.3 BACKGROUND INFORMATION

### The NIMAC

The Individuals with Disabilities Education Act of 2004 (IDEA) created the NIMAC repository as the national source file repository for K-12 textbooks and core instructional materials. At the same time, the legislation created the National Instructional Materials Accessibility Standard (NIMAS) file format. This file format is the only format the NIMAC can accept.

To date, the NIMAC has received 67,000+ NIMAS files from over 160 publishers. These files are made available to states via a secure online system, and authorized users download the files and convert them into accessible formats such as braille, large print, EPUB and DAISY, for use by eligible students in K-12. NIMAS source files themselves are not directly distributed to students.

The overarching goal of the NIMAC and NIMAS is to ensure that students with visual impairments and print disabilities receive the accessible formats that they require to participate and succeed in school. At the same time, the NIMAC supports the “market model” and encourages publishers to produce accessible digital instructional materials, so the need to retrofit content to meet the accessibility needs of students is minimized.

Under IDEA 2004, the NIMAC receives NIMAS files when a state education agency (SEA) or local education agency (LEA) includes language requiring NIMAS in their K-12 instructional materials adoption contracts or purchase agreements. This is the only mechanism for requiring NIMAS from publishers.

### The Notice of Interpretation

In May of 2020, a [Notice of Interpretation](https://www.govinfo.gov/content/pkg/FR-2020-05-26/pdf/2020-09273.pdf) (NOI) was published by the Office of Special Education and Rehabilitative Services of the U.S. Department of Education (OSERS) clarifying that the NIMAC is permitted to accept NIMAS files for digital instructional materials when these materials can be produced in valid NIMAS format. (For more information, visit [NIMAC NOI Frequently Asked Questions](https://www.nimac.us/nimac-digital-materials-faq/).)

This change represents a significant expansion of scope for NIMAS. A key challenge for the implementation of this change is the wide range of digital instructional materials/products currently used in K-12 education. The [NIMAS Technical Specification](https://aem.cast.org/nimas-nimac/nimas-technical-specification) itself, which is a subset of DAISY (ANSI/NISO Z39.86-2005), was not changed by the NOI.

The NIMAS file format is designed to capture static text and images and the linear structure of printed books. Digital instructional materials primarily composed of static text and images, with minimal interactivity, may be appropriate to submit to the NIMAC in NIMAS format. (An example can be found on the National AEM Center’s [NIMAS Exemplars](file:///C%3A%5CUsers%5Cngaines%5CDesktop%5CNIMAC%5CStride%20Sample%20File%5CNIMAS%20Exemplars) page.)

However, materials that are highly interactive and/or provide essential content as audio or video files cannot be converted into NIMAS. In addition to these technical limitations for NIMAS, the NOI also includes a NIMAS exemption for digital instructional materials that meet WCAG 2.0 AA accessibility criteria. This exemption is designed to encourage publishers to incorporate accessibility into digital instructional materials used in schools.

### The Current K-12 Environment

The change in scope for NIMAS comes at a time of increasing reliance on digital instructional materials in K-12 education. The COVID-19 pandemic heightened this trend with the transition to remote learning. Further complicating the accessibility challenges in K-12, traditionally published curricula are increasingly being supplemented—or replaced—by openly licensed educational resources (OER) which are acquired at no cost to schools.

With the advent of the [#GoOpen](https://tech.ed.gov/open/) initiative, for example, many states and districts have committed to the increased use of OER. Procurement for these digital materials does not involve a purchase agreement and so there is not a mechanism to require NIMAS for these materials. Similarly, there appears to be a growing reliance on teacher-created materials, which are also not received by the NIMAC and, like OER, may nor may not incorporate accessibility features.

### Technical Assistance Challenges

The implementation of the NOI involves technical assistance to two target groups: publishers/content creators, and customers who purchase K-12 instructional materials, i.e., state educational agencies (SEAs) and local education agencies (LEAs).

Publishers require guidance to determine what materials are appropriate for production in NIMAS format, and how to successfully produce NIMAS for these materials. States and districts require guidance for determining when it is appropriate to require NIMAS in their procurement contracts for digital instructional materials and ensuring that accessibility provisions are made for materials that are outside scope for NIMAS (e.g., highly interactive digital products that cannot be produced in NIMAS format, OER, teacher-created materials).

In order to support the development of TA for these stakeholders, the NIMAC seeks to contract with a skilled researcher or researchers to explore the questions outlined in Appendix B and provide actionable recommendations/findings.

The research will delve into the current range and role of digital materials in K-12, trends, and technical challenges to providing NIMAS and/or ensuring accessibility of these materials.

The budget cap for this project is $92,000.

## 1.4 APH’S REQUIREMENTS

**Scope of Services and Deliverables**

In May of 2020, the Department of Education published a Notice of Interpretation (NOI) allowing the NIMAC to accept NIMAS source files for digital instructional materials. This NOI is provided as [**Appendix A**](#_Appendix_A:_The).

The NIMAC is seeking to engage an independent researcher to explore some or all of the questions supplied in [**Appendix B**](#_Appendix_B:_Research), to inform future technical assistance to states, districts, publishers and NIMAS conversion vendors.

Because the research undertaken is for the purpose of helping the NIMAC develop technical assistance, it is essential that the research result in actionable findings/recommendations.

While the specific methodology proposed may include additional activities, we anticipate that the work will include, at a minimum, as methods/deliverables:

* Desk research, report writing and design (for publication)
* One or more medium- to large-scale surveys
* Targeted interviews and/or focus groups with experts and stakeholders
* A formal presentation of findings

Additional research methods may also be considered by the researcher. The specific deliverables will be finalized in the development of a statement of work with the selected vendor. The finalization of the research plan in consultation with the NIMAC will be the first step of the research project with the selected Vendor.

The proposal must refer to the questions provided in Appendix B and indicate which questions will be included in the research and to what depth of research/analysis.

**Administrative Services and Supplies –** All administrative services and supplies used by the Vendor to complete the Services will be provided to APH at no additional charge.

**Travel, Meal and Accommodation Expenses –**APH is not responsible for any travel, meal or accommodation expenses incurred by the Vendor that are not pre-approved in writing by APH. The Vendor shall list travel, meal and accommodation expenses as separate line items on its invoices and shall support all such expenses with receipts. It is not anticipated that travel will be required as a part of this contract.

Preference is given to applications from small businesses, minority-owned firms, and women's business enterprises.

# Supplement B – Submission Form

**Request for Services Number: 21319NG01**

To: American Printing House for the Blind, Inc.

(a) The full legal name of the Vendor is:

(b) Please identify any other relevant name under which the Vendor conducts business:

(c) The Vendor’s address, telephone number and email address are:

(d) Please identify the contact person for this RFS and provide their telephone number and email address:

(e) Describe the qualifications and experience of the Vendor to provide the work described in Section 1.4:

* the CV or resume of each researcher to be involved in the project;
* a description of one or more similar research projects undertaken in the past; and
* the contact information for three references.

(f) Describe the approach the Vendor will use to provide the services described in Section 1.4.

(g) Complete and submit the Pricing Schedule set out as Schedule A with the Submission Form. (Please see Section 2.2.1 above for requirements for the Pricing Schedule.)

**There is not a designated form for supplying the Pricing Schedule; however, it must be submitted as a separate electronic file.**

# Appendix A: The Notice of Interpretation

4000-01-U

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: Final notice of 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) with producing accessible instructional materials for students with print disabilities. The U.S. Department of Education (Department) issues this final notice of interpretation to clarify that the definition of “print instructional materials” in IDEA includes digital instructional materials.

DATES: This final interpretation is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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:

## 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 noted 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 extensible markup language (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. (Section 674(e)(2)(A)-(C) of IDEA; 20 U.S.C. 1474(e)(2)(A)-(C)).

Under section 674(e)(3)(C) of IDEA (20 U.S.C. 1474(e)(3)(C)), 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, the use of digital educational materials[[1]](#footnote-1) 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]](#footnote-2) In fact, in 2014, Florida developed a five-year plan that requires all schools to move to digital classrooms.[[3]](#footnote-3) In a recent United States survey, 75 percent of classroom teachers expected digital content to replace traditional print textbooks by 2026.[[4]](#footnote-4)

IDEA, however, 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 limits access to digital materials for students who are blind or visually impaired. The exclusion also forces teachers to retrofit materials or provide alternate materials that are not equivalent to those available to students 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. 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).

Digitally formatted materials accompanied by technology have the potential to facilitate learning for all students. However, these materials will benefit students who are blind, visually impaired, or have other print disabilities only if they are available in accessible formats.[[5]](#footnote-5)

On October 21, 2019, the Department published a notice in the *Federal Register* (84 FR 56154) proposing to interpret “print instructional materials” in section 674(e)(3)(C) of IDEA (20 U.S.C. 1474(e)(3)(C)) to include digital instructional materials. There are no significant differences between the proposed interpretation and this final interpretation.

Other than statutory and regulatory requirements included in the document, the contents of this final notice of interpretation do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

## Public Comment:

In response to our invitation in the notice of proposed interpretation, 48 parties submitted comments.

Analysis of Comments and Changes: An analysis of the comments and any changes in the interpretation since publication of the proposed interpretation follows. We do not address comments that raised concerns not directly related to the proposed interpretation.

Comments: Most of the comments received were in favor of the proposed interpretation. A large majority of the commenters were in full support of the proposed interpretation with no questions or concerns.

Discussion: The Department appreciates the positive feedback and responses regarding this interpretation.

Changes: None.

Comments: Commenters generally agreed that the proposed interpretation meets the original congressional intent, responds to the increase in digital materials used for instruction, and is in line with the current educational paradigm. A few commenters provided data to support this comment. One commenter noted that the absence of digital materials from the definition of “print materials” was unintentional.

Discussion: The Department agrees that the interpretation is in line with congressional intent and is responsive to current educational needs of students with disabilities.

Changes: None.

Comments: The majority of commenters agreed that our proposed interpretation is a timely decision and will ensure timely access to high-quality digital instructional materials. They noted that given the high cost of new technologies, the proposed interpretation will be an efficient and low-cost solution to create accessible materials that allow students with disabilities to participate and use the same educational materials available to their non-disabled peers. They said that the proposed interpretation will also help to increase equity and elevate learning for all students.

Discussion: The Department agrees that this final interpretation helps to ensure access to high-quality digital instructional materials. The Department believes that students who are blind or visually impaired and other students with print disabilities must have equal educational opportunities, comparable access to materials, and access to information in a timely manner.

Changes: None.

Comments: Several commenters noted that “digital” does not mean “accessible” and that digital materials may not work with specialized screen readers such as the DAISY audio player, electronic publication file (EPUB) readers, or refreshable braille displays. According to these commenters, allowing digital materials in the NIMAC would streamline the process of making materials accessible, provide greater access, help to improve the procurement and delivery of accessible instructional materials, and help SEAs and LEAs meet their obligations with respect to a free appropriate public education. They noted that students should be able to access educational materials in the format they require. In addition, a few commenters stated that every child learns differently and that allowing the NIMAC to accept digital educational materials will remove barriers. Also, one State noted that this change matched their current administrative code, which requires a publisher to provide NIMAS file sets to the NIMAC if an electronic textbook is not fully accessible on current computer platforms, or is not available as a print instructional material.

Discussion: The Department appreciates the positive feedback and agrees that “digital” does not necessarily mean “accessible.” Students must receive high-quality digital materials in the format they require.

Changes: None.

Comments: One commenter posed five questions about the proposed interpretation: (1) whether it applies to materials that are exclusively digital; (2) whether it applies to print materials that already comply with the NIMAS format; (3) whether the intent is for every digital element to be converted to the NIMAS format; (4) whether, if the technology of a file already meets Web Content Accessibility Guidelines (WCAG) 2.0 AA, it still needs to go to the NIMAC; and (5) whether students with other types of disabilities[[6]](#footnote-6) will be able to access the files.

Discussion: We appreciate the opportunity to clarify our interpretation in response to the commenter’s questions.

First, digital materials submitted to the NIMAC must be submitted in a valid XML-based NIMAS format. Our interpretation does not impact print materials that have already complied with the NIMAS format. We do not intend for every digital element to be converted to the NIMAS format. Rather, the file must be able to be converted to a valid XML-based NIMAS format. If the digital technology meets WCAG 2.0 AA accessibility specifications, it will not need to be submitted to the NIMAC. Finally, for children to access NIMAS files, they will have to meet the eligibility requirements specified in IDEA. Specifically, they must be a child who is blind, visually impaired, or has a print disability.

Changes: None.

Comments: One commenter was concerned that the change would remove the current requirements for print instructional materials.

Discussion: The current requirements regarding print instructional materials are not changing and will remain in place. The interpretation means the NIMAC may continue to accept digital textbooks and related core materials that can conform to the NIMAS XML format.

Changes: None.

Comments: A few commenters emphasized the need to continue to promote the market models that encourage publishers to create accessible K-12 instructional materials. However, one commenter noted that publishers currently do not use the principles of Universal Design for Learning (UDL) or consider the unique needs of students with print disabilities in the development of their products.

Discussion: The Department fully supports the development of born-accessible digital materials. The Department encourages publishers to meet section 508 accessibility requirements that align to the WCAG 2.0 AA standards. If publishers are creating EPUBs, the Department agrees that they should conform to EPUB Accessibility 1.0 requirements. In addition, the Department encourages publishers to produce born-accessible materials that incorporate the principles of UDL. As the commenters noted, if digital materials are not created using these guidelines, some students will not have access to the high-quality materials necessary for learning.

Changes: None.

Comments: One commenter agreed that adding digital learning materials to the NIMAC would enhance learning experiences for both students and teachers and suggested that to ensure the best outcome, the Office of Special Education Programs (OSEP) should conduct a survey to determine the need for accessible digital instructional materials and ensure effective implementation, for which a second commenter was willing to assist with quantitative data collection. A third commenter wrote that the National Center on Accessible Educational Materials (AEM Center) is prepared to provide technical assistance and to develop models for the markup of digital materials in the NIMAS XML format.

Discussion: The Department appreciates the commenters’ support. OSEP and the NIMAC will work with the AEM Center to develop and provide technical assistance on the final interpretation, and OSEP appreciates the AEM Center’s offer to help with data. OSEP will consider gathering more information to determine the needs of the target population for technical assistance.

Changes: None.

Comments: A few commenters were concerned that this interpretation would be applied too broadly to digital instructional materials and that the materials would not meet the technical specifications of the NIMAS format. In addition, they expressed concern that the interpretation may be misconstrued as extending beyond simple textbooks and related core materials. These commenters also noted that the NIMAS is a source file and the NIMAC should not be accepting files that are intended to be distributed directly to the students. Finally, one commenter suggested that we more clearly specify in the interpretation that the materials must meet the requirements of the NIMAS specification.

Discussion: Although we do not think changes to our interpretation are necessary, we appreciate the opportunity to clarify this important point. Only digital instructional materials that can meet the requirements of the NIMAS specification are appropriate for the NIMAC. NIMAS files are not in a format that can be distributed directly to students. These include digital materials that fit a traditional book format with static print and images. This means that the NIMAC would accept valid NIMAS file sets derived from conforming digital instructional materials that were never produced in a traditional print format. This interpretation refers to the subset of digital instructional materials that are composed primarily of static images and text that can meet the requirements of the NIMAS specification. “Conforming” in this context means digital instructional materials that can be accurately rendered in NIMAS 1.1, including an XML content file using the Baseline Element Set. The Baseline Element Set contains an XML content file, a package file, a portable document format (PDF) copy of the title page (or whichever page(s) contain(s) the International Standard Book Number (ISBN) and copyright information), and a full set of the content’s images. See http://aem.cast.org/creating/nimas-technical-specification-annotated.html. OSEP will work with AEM-related technical assistance centers to fully support the implementation of the interpretation.

Changes: None.

Comments: A few commenters noted that in applying the proposed interpretation to digital instructional materials, if a State chooses to coordinate with the NIMAC, it would not need to send materials already produced or rendered in accessible formats. In addition, one of these commenters noted that the NIMAC should only receive materials that are in a “source file format.”

Discussion: The Department agrees. If digital instructional material is already in an accessible format, it would not need to be sent to the NIMAC. Digital instructional materials are accessible if they meet the standards set forth in section 508 of the Rehabilitation Act of 1973, as amended (Rehabilitation Act). In addition, the NIMAC can only accept materials in a valid NIMAS XML format, which is a source file format.

Changes: None.

Comments: A few commenters wanted to emphasize the continued need for braille instruction in elementary and secondary schools. They commented on the importance of embossed braille and noted that digital materials continue to remain inaccessible for the population of students that require it. They also noted the importance of embossed braille for teaching early literacy skills. One commenter wrote that allowing the NIMAC to accept digital materials would be a significant step forward in addressing accessibility needs and would allow eligible students to receive these materials in a timely manner.

Discussion: The Department agrees that braille instruction and embossed braille remain critical for teaching early literacy skills and instruction in K-12 settings for students who are blind and visually impaired. The Department believes that allowing the NIMAC to accept digital files that meet the NIMAS standard will provide a way for students to receive these materials in a timely manner in the format they require.

Changes: None.

Comments: One commenter noted that the Department’s interpretation is consistent with the MTIA, which amended section 121 of the Copyright Act of 1976, as amended (Copyright Act), to comply with the terms of the Marrakesh Treaty. The commenter wrote that similar to the Department’s interpretation to include digital instructional materials under the definition of “print instructional materials,” MTIA and the accompanying Senate report use the terms “print” and “text” interchangeably. A second commenter noted that the NIMAC Limitation of Use Agreement should be updated to reflect the changes to the Copyright Act enacted in MTIA.

Discussion: The Department appreciates the feedback and agrees that the interpretation is in line with both congressional intent and the updated definition in the Copyright Act. On December 20, 2019, the President signed legislation to align the National Library Service’s definition of “blind and other persons with disabilities” with section 131 of the Copyright Act.[[7]](#footnote-7) The NIMAC Limitation of Use Agreement will be updated to reflect the changes to the Copyright Act enacted in MTIA once the regulations are published by the National Library Service at the Library of Congress.

Changes: None.

Comments: One commenter wrote that the Association of American Publishers has supported the NIMAC and validated its mission since its inception and noted that this interpretation seems timely and sensible. However, the commenter was concerned that, with this change, current guidance will be out of date. The commenter suggested delaying the effective date of the notice of interpretation until guidance is updated.

Discussion: The Department agrees that the interpretation will supersede the current practice that is reflected in the “Publishers and Conversion Houses FAQ” on the NIMAC website. It is the Department’s intent to update the FAQ, and we do not believe that it is necessary to delay the effective date of the notice.

Changes: None.

Comments: One commenter asked how the proposed interpretation applies when the purpose of converting digital instructional materials is the ability to create embossed braille. The commenter noted that interactive or adaptive programs do not easily translate to a static braille format.

Discussion: The Department has considered this issue. We agree that interactive and adaptive programs do not translate to a static braille format. Digital instructional materials intended for the NIMAC would be those materials that follow a traditional textbook format, consisting of static text and images. Section 504of the Rehabilitation Act and the Americans with Disabilities Act (ADA), as amended, would require that interactive and adaptive digital materials be made accessible where needed to provide an equal educational opportunity to students with disabilities, as discussed further in the response to the next comment.

Changes: None.

Comments: One commenter asked how digital materials that are not part of the scope of the NIMAC will fit into the IDEA scheme for delivery to students with print disabilities in a timely manner.

Discussion: The current scope of the NIMAC is limited, but IDEA still requires the provision of free educational materials, including textbooks and instructional materials, in accessible formats to eligible children and students. SEAs and LEAs must provide materials in accessible formats in a timely manner (IDEA Part B, section 612(a)(23)(A) and section 613(a)(6)(B)) (20 U.S.C. 1412(a)(23)(A), 1413(a)(6)(B)).

Further, section 504 of the Rehabilitation Act and the Department’s implementing regulations prohibit discrimination against individuals with disabilities by recipients of Federal financial assistance from the Department, and, among other things, require the provision of a free appropriate public education to elementary and secondary students with disabilities. (34 CFR 104.4, 104.33). The ADA also prohibits discrimination against individuals with disabilities, and the regulations implementing Title II of the ADA include a specific requirement that public entities ensure that communication with students with disabilities is as effective as communication with students without disabilities, through the provision, in a timely manner, of auxiliary aids and services. (28 CFR 35.130(a), 35.160). These laws require SEAs and LEAs to provide educational materials in accessible formats where needed to provide these students with an equal educational opportunity.

Changes: None.

Comments: One commenter noted that it would be useful to understand how the proposed interpretation fits into the broader world of accessibility efforts and what it means for the future of the NIMAS and NIMAC.

Discussion: The Department fully supports the ongoing work of the Web Accessibility Initiative of the World Wide Web consortium on the WCAG 2.0 AA and the EPUB3 accessibility specifications along with the updated section 508 standards in the Rehabilitation Act. However, even if materials are born-accessible, some students will still have needs that cannot be met by commercially available instructional materials, even if they meet WCAG 2.0 AA accessibility and section 508 standards. This is particularly true for students who access instruction through embossed braille and tactile graphics. When this is the case, NIMAS files provided to the NIMAC ensure that students will receive high-quality instructional materials in a timely manner.

Changes: None.

## Final 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 interprets 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 (20 U.S.C. 1474(e)(3)(C)) to include digital instructional materials that comply with NIMAS, because that is the primary medium through which many textbooks and core materials are now produced. 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 (20 U.S.C. 1474(e)(3)(C)). 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 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.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated:

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Mark Schultz,

*Commissioner, Rehabilitation Services Administration.*

*Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services*.

# Appendix B: Research Questions

## State of Digital Materials in K-12

1. What are the primary digital formats currently being distributed by publishers for use in K-12 (e.g., PDF, HTML, EPUB)?
2. What is the level of adoption of EPUB by publishers in K-12?
3. Is EPUB adoption expected to increase in K-12?
4. What are the anticipated publishing trends regarding digital formats used in K-12 for the next 3-5 years?

## Learning Management Systems

1. To what extent are publisher-supplied curricula being distributed only within a web-based Learning Management System (LMS)?
2. To what extent are the most popular LMSs accessible?
3. What impact are platforms like Google Classroom having on access to accessible materials?

## Open Educational Resources (OER)

1. To what extent are OER being used in K-12?
2. What are the most common sources/suppliers for OER?
3. What is current and projected impact of the #GoOpen initiative on K-12 publishing?
4. What is the anticipated growth of adoption of OER by states and districts over the next 3-5 years?
5. How are schools providing accessible alternatives for OER?

## Teacher-created Materials

1. To what extent are teacher-created materials being used in schools?
2. What level of accessibility is typical for teacher-created materials?
3. What software are teachers using to produce their own instructional materials?
4. What digital formats are teachers producing to distribute to students?

## NIMAS Production for Digital Materials

1. What are the technical challenges in making currently used digital instructional materials and their associated Learning Management Systems (LMSs) accessible?
2. What are the technical challenges to generating NIMAS for currently used digital instructional materials?

## Digital Materials in K-3 Settings

1. How often are digital materials being used in K-3 classrooms?
2. Are LMSs such as Seesaw and Google Classroom being used in K-3?
3. Are K-3 students who are blind or visually impaired using the same digital instructional materials as the rest of the class? (Or are they provided different materials?)
4. What is the impact of the increased use of digital instructional materials in the classroom on the braille literacy needs of students in K-3 who rely on embossed braille for learning?
1. For the purpose of this notice of interpretation, the Department views “digital educational materials” as “digital instructional materials.” [↑](#footnote-ref-1)
2. State Educational Technology Directors Association (SETDA). (2019). State K12 Instructional Materials Leadership Trends Snapshot. www.setda.org/master/wp-content/uploads/2019/03/DMAPS\_snapshot\_3.26.19.pdf. [↑](#footnote-ref-2)
3. Florida’s Digital Classrooms Program. www.fldoe.org/core/fileparse.php/5658/urlt/0097843-fdoedigitalclassroomsplan.pdf. [↑](#footnote-ref-3)
4. Harpur, P. (2017). Discrimination, copyright, and equality: Opening the e-book for the print disabled. https://ssrn.com/abstract=2977629. [↑](#footnote-ref-4)
5. Harpur, P. (2017). Discrimination, copyright, and equality: Opening the e-book for the print disabled. https://ssrn.com/abstract=2977629. [↑](#footnote-ref-5)
6. The NIMAC currently serves students who meet the current National Library Service definition of students who are blind, visually impaired, or have print disabilities. It should be noted that this definition was updated on December 20, 2019. The definition now aligns with section 121 of the Copyright Act of 1976, as amended by the Marrakesh Treaty Implementation Act (MTIA), P.L. 115-261. [↑](#footnote-ref-6)
7. The IDEA uses the term “blind or other persons with print disabilities” in 20 U.S.C. 1412(a)(23)(E)(i) and 34 CFR 300.172(e)(1)(i). However, that term 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 U.S.C. 121(d)(3).) [↑](#footnote-ref-7)