

# North Dakota Department of Public Instruction

The Individuals with Disabilities Education Act 2004



## The National Instructional Materials Accessibility Standard (NIMAS) and The National Instructional Materials Accessibility Center (NIMAC)

### Policy Papers in Education

No. 1 April 2009

A guidance document on the responsibility of a school district to provide accessible instructional materials in alternate formats  
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This policy paper is based on federal regulations and reflects changes in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004). The purpose of this document is to provide guidance to individuals interested in the provision of accessible instructional materials to students with disabilities.

NIMAS is a new provision in IDEA 2004 that was designed to maximize access to the general education curriculum for students who are blind or visually impaired, or who have other print disabilities. A persistent problem for many students with disabilities, particularly those with print disabilities, is that the textbooks for their classes have not been available in accessible formats at the same time that their non-disabled peers receive their textbooks. The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) requires states to address the critical difficulty in obtaining accessible textbooks for students with *print disabilities* by adopting a new digital format, the National Instructional Materials Accessibility Standard (NIMAS). The NIMAS requires state education agencies (SEAs) and local education agencies (LEAs) to adhere to the standard.

#### ***ACCESS TO INSTRUCTIONAL MATERIALS***

**§300.172 (a) General.** *The State must—*

*(1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to part 300, 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 (71 FR 41084); and*

*(2) Establish a State definition of “timely manner” ... if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC.*

#### **Why is there a need for a mandatory standard?**

Prior to the NIMAS, the system for acquiring specialized instructional materials was fragmented in that it used a wide range of conversion houses that converted digital files into accessible formats. The adoption of a standard was a simplifying step that was crucial to progress, just as it has been in other fields. An example of this same kind of progress was when a common format was developed for DVD and HDTV. Simplification means broader acceptance and understanding.

A mandatory common standard was considered necessary for several reasons:

- For many students with disabilities, printed instructional materials have raised barriers to access. For example, students who cannot hold a book, who cannot understand or decode text, or who cannot comprehend syntax that supports the written word may experience different challenges and each may require different supports.
- In some cases, schools may not have the technology to provide accessible versions. In other cases, teachers and schools may not understand the issues of access or what solutions are available.
- For many students, the problem has been simply a distribution problem, where they can't get them when they need them.
- Policies and procedures for ordering and disseminating accessible materials have been inefficient and have not been systematic, raising more barriers than opportunities.
- Because school districts determine their own requirements, publishers have had to prepare many different file types (PDF, Microsoft Word, HTML, etc.), resulting in increased production costs, as well as delays and inconsistencies in the materials produced.

### **What are the benefits of using a common standard for print instructional materials?**

The IDEA 2004 included this provision because of the many options NIMAS provides beyond those currently available. For instance, the NIMAS:

- Facilitates the use of a national database, thus reducing duplication of efforts by providing access to a centralized database
- Maximizes the availability and effectiveness of student-ready versions of textbooks used in K-12 curriculum
- Results in higher quality content because the digital files will be provided directly by publishers
- Does not interrupt existing systems that already serve students
- Supports copyright indemnification for publishers and schools

#### **(e) Definitions.**

(1) In this section and §300.210—

- (i) *Blind persons or other persons with print disabilities* means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled “An Act to provide books for adult blind,” approved March 3, 1931, 2 U.S.C 135a;
- (ii) *National Instructional Materials Access Center* or *NIMAC* means the center established pursuant to Section 674(e) of the Act;
- (iii) *National Instructional Materials Accessibility Standard* or *NIMAS* has the meaning given the term in section 674(e)(3)(B) of the Act;
- (iv) *Specialized formats* has the meaning given the term in section 674(e)(3)(D) of the Act.

(2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.

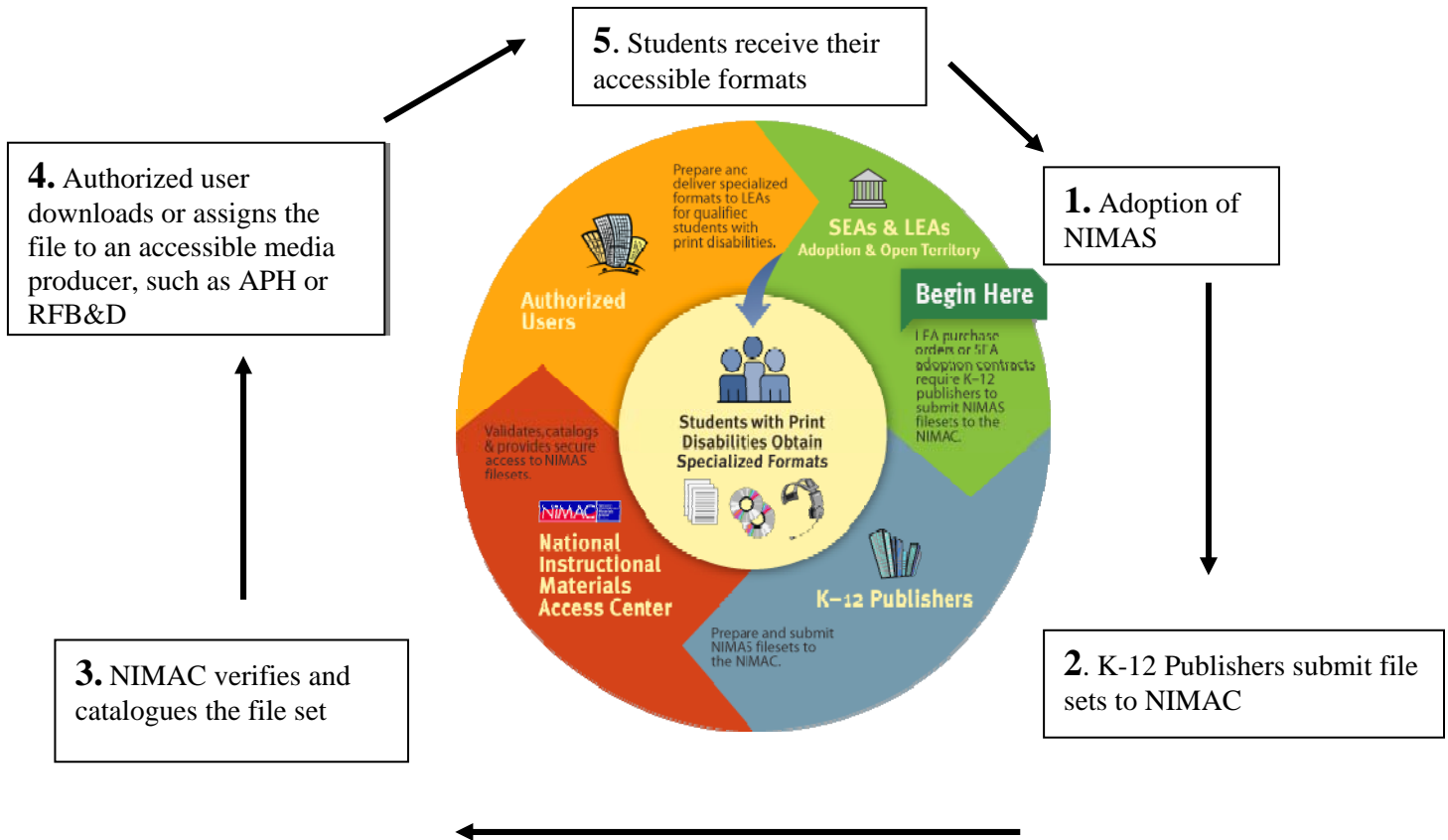
### **What are the implications of NIMAS for schools?**

There has always been a requirement under the IDEA for local school districts to provide instructional materials in accessible formats to any student with a disability who needs them. This continues to hold true, even if the student is not eligible to receive NIMAS versions of the printed textbook. The NIMAS ensures that states adhere to the same standard in reproduction of the printed text to a digital format so that it can be converted into an accessible format in a timely manner. North Dakota was required to establish a state definition of “timely manner,” regardless of whether it does or does not coordinate with the national central repository, the National Instructional Materials Accessibility Center (NIMAC). This simply means that even if the school district chooses not to work with the NIMAC (the central repository); it is still required to provide accessible formats of print instructional materials in a timely manner.

The NIMAS requirements have several implications for professionals within the public schools.

1. It will necessitate involvement of principals, superintendents and curriculum directors. For instance, as local school districts enter into new contracts with K-12 publishers, they must ensure that the publishers create digital versions of textbooks in the NIMAS standard and submit them to the NIMAC.
2. General and special education teachers and other IEP team members will need to develop common strategies for determining student need for accessible specialized formats.
3. Teachers and students will need training on how to use equipment necessary for accessing the alternate formats.

### Accessible Instructional Materials Overview



### ACCESS TO INSTRUCTIONAL MATERIALS

**§300.172(b)(4)** *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 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.*

## What are eligibility requirements for students to qualify for NIMAS derived files?

The Library of Congress Regulations, “An Act to provide books for adult blind,” approved March 3, 1931, 2 U.S.C 135(a) defines eligibility as:

- i. 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 of visual field subtends an angular distance no greater than 20 degrees.
- ii. Persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material.
- iii. Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.
- iv. 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

### ***THE CHAFEE AMENDMENT***

*The Copyright Act includes a “limitation to exclusive rights” when materials are being reproduced for “blind or other people with disabilities.” It allows an authorized entity to reproduce or distribute copies or recordings of a previously published, non-dramatic literary work in specialized formats exclusively for use by persons who are blind or have other print disabilities. Specialized formats mean Braille, audio, or digital text. IDEA 2004 expanded the definition of specialized formats initially developed in the Chafee Amendment to include large-print formats.*

## Who can determine a student to be NIMAS eligible?

In cases of blindness, visual disability, or physical limitations **competent authority** includes:

- Doctors of medicine
- Doctors of osteopathy
- Ophthalmologists and optometrists
- Registered nurses
- Therapists
- Professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents).

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

The NIMAS Technical Assistance Center estimates that less than 10% of students with disabilities under IDEA will be determined by a **competent authority** to be eligible for the NIMAS files (called source files).

### ***ELIGIBILITY DOCUMENTATION***

*In order to request NIMAS materials from the ND Vision Services/ School for the Blind or from Authorized Entities such as Recordings for the Blind and Dyslexic or Bookshare.org, districts must acquire documentation of each student's disability as determined by a competent authority.*

## What are the critical elements for implementing NIMAS?

1. Preparation and delivery of files: As part of any print instructional materials procurement process, the school district must enter into a written contract with any publisher of the K-12 materials to:

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

Below is a sample statement that may be included in a contract or purchase order:

*“By agreeing to deliver the materials marked with "NIMAS" on this contract or purchase order, the publisher agrees to prepare and submit, on or before \_\_\_/\_\_\_/\_\_\_ a NIMAS file set to the NIMAC that complies with the terms and procedures set forth by the NIMAC. Should the vendor be a distributor of the materials and not the publisher, the distributor agrees to immediately notify the publisher of its obligation to submit NIMAS file sets of the purchased products to the NIMAC. The files will be used for the production of alternate formats as permitted under the IDEA 2004 for students with print disabilities.”*

2. Documentation of Print Disability in the IEP: The use of NIMAS-based materials is limited to students with a documented print disability in a student’s IEP. This qualifies the student to access and use specialized formats under provisions of the Chafee Amendment to the Copyright Act. The Chafee amendment allows "authorized entities to reproduce or distribute copies of previously published non-dramatic literary works in specialized formats exclusively for use by persons with blindness or other disabilities."
  - a. School districts should keep on file documentation of students' eligibility to use NIMAS files.
  - b. NIMAS takes into account protection of publishers’ copyright. Violating copyright law is a legitimate concern for schools, publishers, and the federal government.

### **What does the Office of Special Education Programs (OSEP) say about how NIMAS is addressed by IEP teams?**

In the Office of Special Education Programs’ (OSEP) “[\*Questions and Answers on NIMAS 2007\*](#)” document, question A-10 reads, “*Are IEP Teams authorized to determine if a student requires accessible instructional materials? Are LEAs required to pay for additional medical certification to verify that a student’s print disabilities are organic in nature?*” OSEP’s answer reads as follows:

“The IEP Team determines the instructional program, modifications, and accommodations needed for students with disabilities, including the need for accessible instructional materials. However, according to the Library of Congress regulations (36 CFR §701.6(b)), only a competent authority can certify students eligible to use instructional materials produced in specialized formats from NIMAS files. In the case of a reading disability from organic dysfunction, these regulations define a 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. **LEAs have the responsibility, including the assumption of any costs, to obtain the appropriate certification for the students (emphasis added).** The complete 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 information is available at <http://nimas.cast.org/downloads/OSEP.NIMAS.Summary.doc>”

### **What is the National Instructional Materials Accessibility Center (NIMAC)**

The NIMAC serves as a national repository of the instructional materials source files ([definition pg. 7](#)) submitted by publishers for use in elementary and secondary schools nationwide. The NIMAC receives, verifies and catalogues NIMAS source files. The American Printing House for the Blind (APH) was designated as the entity to maintain and coordinate NIMAC operations.

## **KEY CONCEPT**

*Effective August 19, 2006, school districts must ensure that future contracts with publishers clearly state that the publishers agree to submit NIMAS files of elementary and secondary school textbooks and related core print instructional materials to the NIMAC. The files will then be downloaded and transformed by authorized users into student-ready versions and delivered to students via their school or teacher, etc.*

The NIMAC will significantly reduce duplication of effort and states/districts can pool their efforts and their materials. School districts may access and use these source files by way of the state's authorized user.

- NDDPI has registered with the NIMAC and has identified the ND Vision Services/ School for the Blind as an authorized user. They may obtain files directly from the NIMAC;
- School districts must arrange to have files converted to accessible textbooks by using their own resources or contracting with others;
- Authorized users, such as the ND Vision Services/School for the Blind, will serve as a conduit between the school districts and the NIMAC.

In OSEP's "*Questions and Answers on NIMAS 2007*" document, Question A-17 reads, "What does it mean to coordinate with NIMAC?" OSEP's answer was as follows:

"Coordinating with 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 NIMAS-eligible students in elementary and secondary schools."

## **PURCHASE OF INSTRUCTIONAL MATERIALS**

*§300.210 (b) Rights of LEA.*

*(1) Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.*

*(2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.*

*(3) Nothing in this section relieves an LEA 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 Sec. 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 should IEP teams consider whether a student needs instructional materials in accessible formats?**

The following steps address how the need for alternate formats is considered:

1. Does the student have difficulty with print-based instructional materials used in any content area?
  - a) If yes, what are the factors that contribute to the difficulty (i.e., related to disability, dyslexia)
2. What alternate formats are needed by the student (Braille, large print, e-text, or audio)?
3. What additional instruction, assistive technology, support services, and/or training will be needed by the student and others to use the materials effectively?

*Access to the general curriculum (34 CFR 300.138(a) and 300.347(a)(3):* Students with disabilities are to be provided access to the general curriculum through modifications, accommodations, supplementary aids, and supports in order to make satisfactory educational progress. The team needs to consider each student's need for accessible, alternate format versions of print instructional materials. If a student with a print disability needs a specialized format, the IEP should reveal the following:

- For each content area, whether the student has difficulty with print-based instructional materials and what factors contribute to the difficulty;

- Whether the student has been certified as having a print disability under the Chafee Amendment for vision impairment, blindness, physical limitations or reading disability caused by organic dysfunction. The student's disability should be documented by a competent authority and be kept on file;
- The specific format(s) to be provided (Braille, audio, e-text, large print, etc.);
- The services and/or assistive technology the student needs to use the specialized format; and,
- The individual(s) responsible for providing the specialized format.

## **How is consideration of NIMAS documented in the TIENET web-based case management system?**

*In Section G (Adaptation of Educational Services), the IEP team may document the following:*

Does the student need instructional and related core materials in an accessible specialized format?

**Yes**  **No**  (**must check one**)

1. If the team checked **No**, then proceed to the next section of the page.
2. If the team checked **Yes**, select the alternate format(s) needed for the student. The team will select one or more of the following: Braille, large print, digital (e-text) or audio; and
3. Document whether the student is eligible to receive NIMAS files. The question reads: *Is the student eligible to receive NIMAS files as certified by a competent authority?* **Yes**  **No**  (**must check one**)
4. If the team checks **Yes**, then the link to the **Verification of Eligibility** form will appear at the top of the screen. You will need to click **Save, Done Editing** before you go to the form or all the information you entered in Section G will be lost. This form is not a required form, so the district may use its own form for this documentation. However, this form serves two useful functions:
  - a. As a reference to eligibility requirements;
  - b. As a record that the team discussed NIMAS and that eligibility was determined by a competent authority.
5. If the team checked **No**, the screen will display an assurance message that, although the student doesn't qualify for NIMAS files, the instructional materials will be provided in an accessible format to the student who needs it.

## **What curriculum materials are covered by NIMAS?**

IDEA 2004 indicates that the term "print instructional materials" includes 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 the school for use by students in the classroom.

## **Can a school district cooperate with the NIMAC and contract directly with publishers as they have in the past?**

Yes. Schools may use the NIMAC by way of the authorized user or they may use other avenues to obtain alternate formats, or use a combination of the two. In keeping with existing practice, school districts may meet NIMAS-related requirements by contracting with curriculum publishers directly to purchase accessible, student-ready versions. This is referred to as the "market model" and some expect that eventually schools won't have to find textbooks or related materials through the NIMAC. Publishers are not mandated to submit files to the NIMAC. The requirement is on the SEA and the LEA. So, it is important that a school district's contracts (or other agreements) stipulate that instructional materials ordered directly from publishers will be delivered the same time as print textbooks are received for other students.

## **Can the school share the alternate format derived from NIMAS source files with other students who are not found eligible under NIMAS?**

The Chafee Amendment and IDEA prohibits the sharing of specialized formats with students who are not NIMAS eligible, even if they may benefit from the materials. The schools may, however, directly order the specialized format from a publisher for use with students who are not NIMAS eligible.

## **What are NIMAS “source files”?**

NIMAS source files are the digital version of K-12 textbooks. Only an authorized user such as ND Vision Services/ School for the Blind may download NIMAS source files or assign them to an accessible media producer such as Recordings for the Blind and Dyslexic (RFB&D). They cannot be distributed at the classroom, school, or even district level because the source files require additional enhancements to make them appropriate for student use.

## **How are these NIMAS source files converted to student-ready versions?**

If they have the capability, the authorized user may download and convert the file to a student ready version of the alternate format required. They may also assign the digital textbook to a third party called an authorized entity to create the student-ready version of the textbook. Conversion to student ready formats can occur through the following:

- Authorized entities such as Recording for the Blind & Dyslexic, American Printing House for the Blind, Bookshare.org, etc.
- Regional or state conversion organizations such as Texas Region IV ESC Braille Services, the California Department of Education Clearinghouse for Specialized Media and Technology (CSMT), the Kentucky Accessible Materials Consortium, and other state instructional materials resource centers, such as ND Vision Services/ School for the Blind
- Software developers and file conversion services;
- Direct sale to states and school districts by K–12 curriculum publishers (“market model”); and
- Accessible media producers (AMPs) such as Braille transcribers.

## **What is an Authorized User?**

Authorized users (AU) are designated and registered with the NIMAC by the state coordinator. In North Dakota, the only authorized user assigned by the NDDPI is the ND Vision Services/ School for the Blind.

- Each AU signs and submits a Limitation of Use Agreement;
- The AU searches the NIMAC database, downloads files for conversion, or assigns the files to an Accessible Media Producer (AMP)

## **What are Authorized Entities?**

Authorized entities may access and distribute NIMAS content because they qualify for a special exemption to the copyright law and are thus able to distribute content for which electronic rights may not have been provided to educational publishers in order to improve access for qualified individuals with disabilities. A definition for "authorized entity" is provided within Public Law 104-197 (also known as the Chafee Amendment), Section 121(c)(1)"... a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities." In addition, NIMAS content preparation and distribution pertains only to K-12 educational materials.

Authorized entities include:

- American Printing House for the Blind (APH) <http://www.aph.org>
- Bookshare <http://www.bookshare.org/web/Welcome.html>
- Recording for the Blind & Dyslexic (RFB&D) <http://www.rfbd.org>
- Instructional Resource Centers for the Blind and Visually Impaired (IRCBVI) <http://www.afb.org/Section.asp?SectionID=58&TopicID=255&DocumentID=2964>

### ***LOCATING A BOOK IN THE NIMAC***

The ND Vision Services/School for the Blind locates books in the NIMAC through its International Standard Book Number (ISBN). This number is the unique identifier of each published book and most instructional materials. It will be used to locate the book in the NIMAC.

It is a 10-digit number located on the back of the book's title page.

- It will have hyphens and may end with the letter x, which represents the digit 10.
- The ISBN clearly identifies each book as unique between the subtitles of a series, ancillary materials, or the teacher's edition and the student's text.

### **How can I obtain more information about the NIMAS and NIMAC?**

- ND Dept of Public Instruction Special Education website <http://www.dpi.state.nd.us/speced/index.shtm>
- NIMAS Technical Assistance Center <http://nimas.cast.org>
- Official NIMAC website <http://www.nimac.us>
- Office of Special Education Programs (OSEP) “Questions and Answers On the National Instructional Materials Accessibility Standards (NIMAS)”, January 2007 <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C5%2C>
- American Foundation for the Blind <http://www.afb.org/Section.asp?SectionID=44&TopicID=255>

## Teacher's Checklist

***What are the basic steps I should follow if I have a student who needs instructional materials in a specialized format?***

1. Document the need for specialized instructional materials in the IEP.
2. Identify which accessible format(s) will be needed. (Braille, large print, audio, digital)
3. Complete the *Verification of Eligibility* form that documents the student's eligibility to receive the digital source files from the National Instructional Materials Accessibility Center (the NIMAC). See page 7.
4. Contact the ND Vision Services/School for the Blind (NDVS/SB) authorized user to search the NIMAC. Confirm that the student has been determined eligible by competent authority, as defined on page 4 of this document.

**OR**

5. Contact Bookshare at <http://www.bookshare.org/web/Welcome.html> to see if the version is available for direct download. You will need to establish a school account but there is no fee for accessing the materials as long as the student is school age.
6. Either way, you will need to provide NDVS/SB or Bookshare with the *International Standard Book Number (ISBN)*, which is a unique identifier for each book that is used to locate the book in the NIMAC.
7. The authorized user, ND Vision Services/School for the Blind, will search the NIMAC and will either download the digital version or assign it to an accessible media producer so that it can be converted into the student ready specialized format.
8. If the authorized user converts the instructional material(s) into a student-ready version, it will send the specialized format directly to the school district. If the authorized user assigns the digital file to an accessible media producer for conversion, then the accessible media producer will send the student-ready version to the school district and will bill the school district directly.
9. Before the student-ready version of the textbook is received, or as soon thereafter as possible, the student and teacher(s) should receive training on how to use equipment necessary for accessing the alternate formats.
10. Document the date the materials were received. If the student did not receive his or her specialized format at the same time as his or her non-disabled peers received theirs, document why and place in the student's file.

***NOTE: Keep in mind that, if the student will need the specialized format in September, you should request it from the NDVS/SB or Bookshare in the spring prior to the next school year. Likewise, if the student needs the specialized format for second semester, request it in September. The student should receive their specialized format at the same time as their non-disabled peers receive their textbooks.***