Information Update Bulletin 20.02

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[Editorial Note: Revised Eligibility Certification and FAQ #4 on 2/18/2021]

TO:	District Administrators, CESA Administrators, CCDEB Administrators, Directors of Special Education and Pupil Services, and Other Interested Parties
FROM:	Barbara Van Haren, PhD, Assistant State Superintendent, Division for Learning Support
SUBJECT:	Legal Requirements for Accessible Educational Materials (AEM) for Eligible Students with Disabilities (This replaces Bulletin 18.03)

Frequently Asked Questions

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A provision in the Individuals with Disabilities Education Act of 2004 (IDEA) established the National Instructional Materials Accessibility Standard (NIMAS). See 34 CFR § 300.172(a)(1). Under IDEA, in order for students to be eligible for NIMAS-derived materials, they must: (1) be receiving special education services under IDEA and (2) meet the qualification criteria of the National Library Service for the Blind and Print Disabled at the Library of Congress (NLS). In December 2019, Congress updated the NLS statute, which affected NIMAS.

Under NLS, the term "eligible person" now describes students who qualify for NIMAS-derived materials as follows:

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.

In order to be eligible for NIMAS-derived materials, students must be receiving services under IDEA and fall under one of the qualifying criteria identified above. Note that changes in federal law eliminates the definition of "reading disability resulting from organic dysfunction" and allows the reproduction of works into an accessible format for anyone with a visual impairment or a perceptual or reading disability that cannot be improved to allow for functionality that is equivalent to those without such a disability. Consequently certification may be conducted by a medical doctor but is no longer required. Eligibility may now be certified by professional staff such as an educator, social worker, case worker, counselor, rehabilitation teacher, reading specialist, school psychologist, superintendent, or librarian.

The term "accessible formats" now describes the types of formats that may be developed from NIMAS file sets as follows:

An alternative manner or form that gives an eligible person access to the work when the copy or phonorecord in the accessible format is used exclusively by the eligible person to permit him or her to have access as feasibly and comfortably as a person without such disability.

While the previous term "specialized formats" had identified four specific alternative media – namely, braille, audio, digital text, and large print – the new term "accessible formats" is a more inclusive and functional term that focuses on the experience of the user, emphasizing that an alternative format enables the eligible person to have access to the work "as feasibly and comfortably as a person without such disability."

If a student is eligible for NIMAS materials, then an authorized user can directly request the materials from the National Instructional Materials Access Center (NIMAC). The Wisconsin Accessible Educational Materials Center (WI AEM Center) is an authorized user that coordinates with NIMAC to assist districts in securing timely access to specialized formats of printed textbooks and core instructional materials for students with print disabilities. Due to copyright laws, textbook and other core material files may only be used to create accessible formats for the eligible student for whom the material was requested. The Wisconsin Center for the Blind and Visually Impaired (WCBVI) also assists with securing braille materials and other supports for students who are blind or visually impaired. Districts may contact the WI AEM Center for assistance with obtaining materials from NIMAC and the WCBVI, or work directly with Bookshare and Learning Ally.

The U.S. Department of Education has stated that "timely access to appropriate and accessible instructional materials [AIM] is an inherent component of a public agency's obligation under IDEA to ensure that [a free and appropriate public education] FAPE is available for children with disabilities and that children with disabilities participate in the general education curriculum as specified in their [Individualized Education Programs] IEPs." 71 Fed Reg. 46540, 46618 (August 14, 2006). In Wisconsin, all students eligible for materials in an accessible format must receive their materials at the same time as their non-disabled peers. In some instances, original formats are highly technical and/or include a high number of tactile graphics and take additional time to convert to an accessible format. In order to meet the requirement that students who require accessible formats receive their materials at the same time as their non-disabled peers, local education agencies (LEAs) must be aware of the content of the original formats that need to be converted into accessible formats and obtain educational materials as early as possible. When an LEA purchases curriculum, they must ensure publishers of instructional materials submit their electronic files to the NIMAC in a timely manner and students who require accessible formats receive instructional material at the same time as their non-disabled peers.

If an IEP team determines a student with a disability who does not meet the criteria above requires AEM/AIM, they must still be provided to the student in a timely manner. See 34 CFR § 300.172(b)(3). Many accessible instructional materials may be obtained from multiple sources, including accessible media producers such as Learning Ally, Bookshare, or the American Printing House.

Frequently Asked Questions

1. **How long does it typically take to obtain a NIMAS file?**

Once the NIMAS file has been assigned to the appropriate Accessible Media Producer (AMP), it may take up to two weeks before the file is available for download. If the NIMAS file is not available on the NIMAC, it is the responsibility of the LEA to request that the publisher release their file to the NIMAC pursuant to their print book purchase agreement. For more information about how to obtain AIM/AEM please see the "WCASS Guide: How to Provide Students with IEPs Access to their Grade Level Curriculum through Text to Speech." Links to sources are also provided at the bottom of this bulletin.

2. What services and materials are available to students who are blind or visually impaired in Wisconsin?

Consultation, assessment, and evaluation supports are available at no cost to local school districts through outreach services from the Wisconsin Center for the Blind and Visually Impaired (WCBVI). The WCBVI Materials and Production team is available to assist school districts by providing research for accessible educational materials (AEM) for

students in Wisconsin who are blind and visually impaired. Additional information about the textbook research request process may be found on the [WCBVI Outreach Materials and Production](#) webpage.

3. Are students designated under Section 504 eligible for NIMAS/ NIMAC materials?

No, only students who are served under the IDEA, and meet the NLS criteria, are eligible to receive formats that have been developed from NIMAS files through the NIMAC. If it is suspected that a student served under Section 504 may also need AEM, then it would be the responsibility of the LEA to provide these materials.

4. How do you document that the student has a need for AEM in the IEP?

IEP teams may document and explain how the student's disability affects the student's ability to read (e.g., the student is unable to read printed works to substantially the same degree as a person without an impairment; or the student is unable to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading) in the "Effects of Disability" section of the IEP on the [I-4 linking form](#) and under Special Factors. Once the IEP team determines the student's disability-related needs, the IEP team considers what AEM/AIM the student requires. For more information about determining the effects of disability and disability-related needs, please see guidance on developing College and Career Ready IEPs [Step 2](#).

5. What types of accessible formats should the IEP team consider?

AEM may be provided in audio, braille, large print, digital text, or text-to-speech application. AEM are not limited to these formats. AEM include an alternative manner or form that gives an eligible person access to the work when the copy or phonorecord in the accessible format is used to permit him or her to have access as feasibly and comfortably as a person without such disability.

6. How can IEP teams determine which digital features are best for the student?

Many of the features that previously required the purchase and installation of specialized software are now often included as standard options on the devices many students already own. This makes the process of finding a good feature match for a student easier and less costly. [Personalizing the Reading Experience](#) provides guidance on how to activate built-in accessibility options (e.g., display options and text to speech) for customizing the reading experience. By experimenting with the various options, educators, students and families can work together to determine which digital features are best for the student.

7. How do I, as district staff, ensure materials will be available in a timely manner?

LEAs should take all reasonable steps to provide students with disabilities accessible instructional materials at the same time as other students receive their instructional materials. To that end, LEAs should submit requests to the WI AEM Center or WCBVI as early as possible.

Additional Resources

- Loans of Library Materials for Blind and Other Print-Disabled Persons
- National Center on Accessible Educational Materials
- NIMAC
- WI AEM CENTER
- WCBVI Outreach Materials and Production
- WCASS Guide How to Provide Students with IEPs Access to their Grade Level Curriculum through Text to Speech
- Bookshare
- Learning Ally
- Wisconsin Talking Book and Braille Library (WTBBL) | Wisconsin Department of Public Instruction
- Individualized Education Program (IEP): Preparing Students for College and Career

For questions about this information, contact the DPI Special Education Team at (608) 266-1781.