

FLORIDA DEPARTMENT OF EDUCATION



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Technical Assistance Paper Accessible Instructional Materials Questions and Answers

Summary:

This technical assistance paper was designed to assist school districts in providing access in a timely manner to both appropriate and accessible instructional materials, an inherent component of the provision of a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act of 2004 (IDEA) for students with disabilities (34 Code of Federal Regulations [CFR] 300.210(b)(3)). Students with disabilities who cannot read standard print effectively and are therefore unable to meet grade-level expectations due to their disability require accessible instructional materials to participate in and make progress in the general curriculum. The individual educational plan (IEP) team is responsible for determining if a student needs accessible instructional materials, the format of such materials, and the necessary related accommodations and/or modifications for the student to participate in the general curriculum.

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A. Purpose and Definitions

A-1. What is the purpose of this technical assistance paper?

This technical assistance paper is designed to assist the individual educational plan (IEP) team in identifying materials that need to be made accessible, identifying procedures for determining if a student requires accessible instructional materials, and providing information on available resources and supports. Students with disabilities who cannot read standard print effectively and are therefore unable to meet grade-level expectations due to their disability require accessible instructional materials to participate and progress in the general curriculum. Providing access in a timely manner to both appropriate and accessible instructional materials is an inherent component of the provision of a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act of 2004 (IDEA) for students with disabilities (34 Code of Federal Regulations [CFR] 300.210(b)(3)). The IEP team is responsible for determining if a student needs accessible instructional materials, the format of such materials, and the necessary related accommodations for the student to participate in the general curriculum.

A-2. What are “print instructional materials?”

IDEA defines print instructional materials as printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a state education agency or school district for students to use in the classroom (20 U.S.C. [United States Code] 1474(e)(3)(C)).

A-3. What are “accessible instructional materials?”

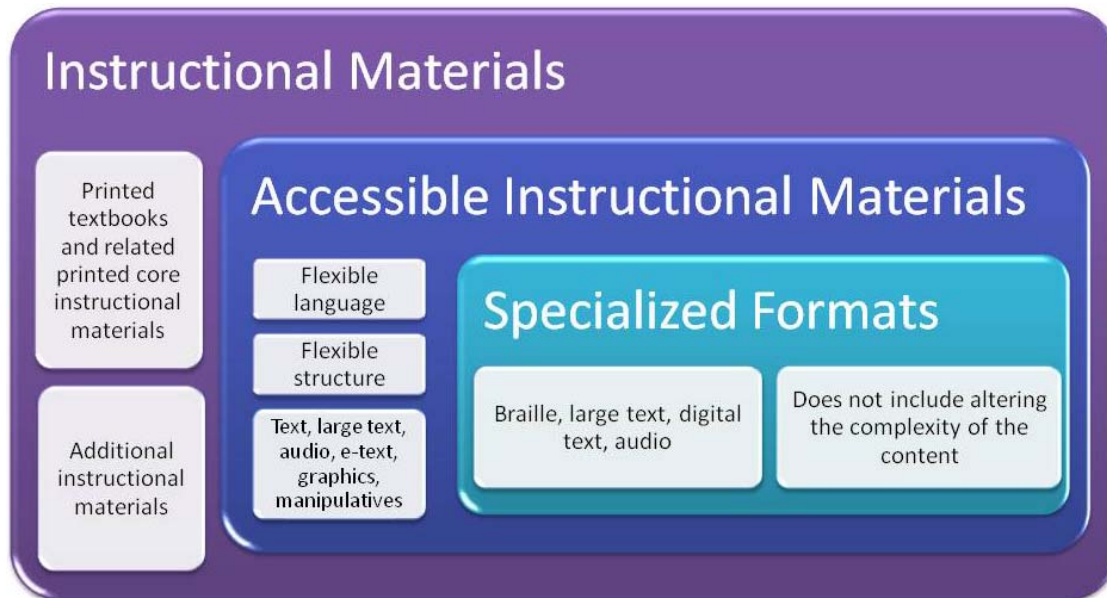
Accessible instructional materials are instructional materials and print instructional materials that have been formatted or adapted to meet the individual needs of students with disabilities. Examples include restructured print, braille, large print, digital text (or e-text), audio, graphic-enhanced text, images, and manipulatives. The specific types of adaptations to instructional materials should be based on the student’s IEP statement of how the student’s disability affects involvement and progress in the general education curriculum (34 CFR §§300 and 301, Summary of Changes, pp. 46618 and 46625). Based on this IEP statement, the identification of appropriate accessible instructional materials may involve a review of the language and reading level, how the information is structured or organized, and how the information is presented (visual, auditory, or tactile).

Current research in the development of math and science skills emphasizes the importance of math and science manipulatives. When using these types of instructional materials, special attention should be paid to the accessibility needs of students with physical and visual disabilities.

Timely access to appropriate and accessible instructional materials is an inherent component of a school district’s obligation under IDEA to ensure that FAPE is made available to students with disabilities, and that, in accordance with IEPs, students have access to the general curriculum (34 CFR §§300 and 301, Summary of Changes, p. 46625).

A-4. What are “specialized formats?”

Specialized formats (34 CFR §300.172(e)(1)(iv)) are a subset of accessible instructional materials that refer to braille, large print, audio, or digital text used by people who are blind or have other print disabilities. In this context, specialized formats do not include altering the content (e.g., the complexity) of the print instructional material.



A-5. What are core instructional materials?

Core instructional materials are printed textbooks and related printed materials published with textbooks that are written and published primarily for use in elementary and secondary school instruction AND are required by the Florida Department of Education or the school district for classroom use. (State-Adopted Instructional Materials).

These materials DO NOT INCLUDE materials that are not written and published primarily for students to use in the classroom (e.g., trade books not bundled with the textbook, newspapers, and reference works) and ancillary or supplemental materials that are not necessary to meet the curriculum requirements for the intended course.

B. Accessible Instructional Materials and the Individual Educational Plan

B-1. Why are accessible instructional materials important?

IDEA supports the rights of students with disabilities to access, participate in, and progress in the general education curriculum. Accountability was included with the No Child Left Behind (NCLB) legislation, targeting the responsiveness and quality of the educational system based on student achievement. Accessible instructional materials are needed to provide effective participation in the general curriculum as well as provide flexible assessment tools that accurately measure skill development for students with disabilities.

Examples of students who may benefit from accessible materials follow.

- Students who cannot decode text and/or have language-related disabilities have shown positive effects for fluency with text-to-speech.
- Students with attention, organizational, and/or learning disabilities have shown improved academic gains with visual mapping supports, such as concept mapping.
- Students who cannot hold a printed book or turn the pages benefit from digital books where the pages can be “turned” by a switch or key press.
- Students who are deaf or hard-of-hearing have demonstrated academic gains with sequential text highlighting and captioning.
- Students who are blind or visually impaired benefit from digital text that can be converted to braille, used by refreshable braille displays, or converted to audio.¹

B-2. What role does Universal Design for Learning have in determining appropriate and accessible instructional materials?

Universal design as used in IDEA is based on the definition found in the Assistive Technology Act of 1998 (Section 3(17)):

The term “universal design” means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

Universal Design for Learning, or UDL, provides a framework that schools can use to identify products, services, and technologies that may assist in quick adaptations of instructional materials to meet a student’s unique needs. For example, use software to quickly change the size of digital text, provide text-to-speech tools so the text can be read aloud, provide tools to restructure the text, and (depending on the program) open a variety of text formats, including Digital Accessible Information System (DAISY), National Instructional Materials Accessibility Standard (NIMAS), PDF, text, and web pages. Tools of this nature address a wide variety of accessibility needs.

In another example, a classroom or media center may have a wide variety of books on core curriculum topics available at various reading levels, print or audio files, and regular and large print. In this way, students can quickly find the instructional materials that meet their needs.

B-3. How does the IEP team determine the need for, and format of, accessible instructional materials for a student?

As a part of developing the student’s present level of academic achievement and functional performance as required by 34 CFR §300.320, an IEP team determines if the student cannot use or interact with typical instructional materials effectively and is unable to meet grade-

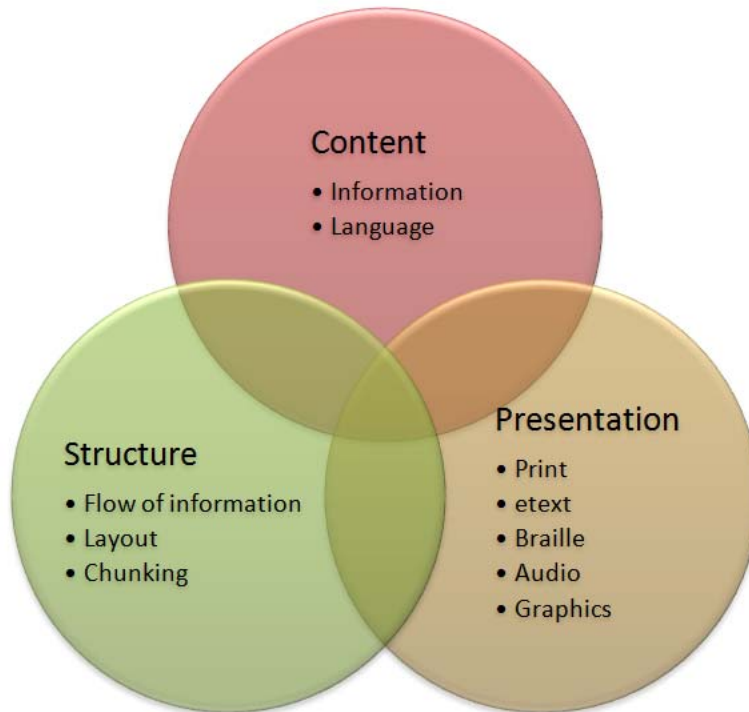
¹ Stahl, S. (2004). *The promise of accessible textbooks: Increased achievement for all students*. Wakefield, MA: National Center on Accessing the General Curriculum. Retrieved June 1, 2009, from http://www.cast.org/publications/ncac/ncac_accessible.html.

level benchmarks due to his or her disability. The team can also include accommodations that take into consideration the primary language of a student when English is a second language.

Determinations can be made through learning media assessments, informal reading inventories, current levels of performance, medical diagnosis, etc. If the team determines that there is a need for accessible instructional materials, the relevant team members working with the student should make recommendations to the IEP team on appropriate accessible formats and features.

There are three aspects of instructional materials the IEP team may consider when determining what appropriate and accessible instructional materials a student needs.

- **Content:** Is the information and language appropriate and understandable for this student? This may include an evaluation of the grade level of the reading material. It can also include accommodations that take into consideration the primary language of a student when English is a second language.
- **Structure:** Is the flow of information appropriate for this student? Some students may be unable to handle large chapters of text successfully and need to work with the information in smaller chunks or in an outline form. This may include adapting the layout of the information.
- **Presentation:** Is the sensory aspect of the format appropriate for this student? Does the student need an audio file, larger print, braille, graphic-enhanced text, colored overlays, etc.?



Examples of individuals who may be included in making decisions about accessible instructional materials are provided below.

- For students with a physical disability, a physical therapist, occupational therapist, teacher, and/or assistive technology specialist may work together to identify appropriate digital books and computer switch control systems and/or alternative keyboards.
- For students with autism spectrum disorder, a learning disability, or an intellectual disability, a teacher, learning resource specialist, and assistive technology specialist may work together to identify appropriate digital books and related accommodations, such as text-to-speech tools to read the books aloud, graphic-enhanced text, etc.
- For students with a sensory disability (e.g., vision, hearing), a teacher of the visually impaired and/or teacher of students who are deaf/hard-of-hearing, learning resource specialist, assistive technology specialist, and medical professional may work together to identify the appropriate format, such as braille, large print, audio, captioning, etc.

B-4. What information related to accessible instructional materials should be documented in the IEP?

Access to appropriate and accessible instructional materials is an inherent component of a local education agency's (LEA) obligation under IDEA to ensure that FAPE is available for all children with disabilities. Based on the IEP's statement of how a student's disability affects his or her involvement and progress in the general education curriculum, the team is encouraged to specify the following for both instructional and assessment materials:

- The specific format(s), features, and related accommodations to be provided (digital text, large print, braille, audio, text-to-speech, etc.)
- The services and/or assistive technology the student needs to use the accessible materials
- Whether the student has a recognized print disability under the National Instructional Materials Accessibility Standard (see Technical Assistance Paper 2009-084, *Questions and Answers: National Instructional Materials Accessibility Standard*, which can be found at <http://info.fl DOE.org/docushare/dsweb/Get/Document-5424/dps-2009-084.pdf>, for information on print disabilities and NIMAS services available to Florida schools and students)
- Whether the format is required to be used in the student's home or in another setting in addition to the classroom for the student to receive FAPE

B-5. What resources are available to help the IEP team in the determination and identification of appropriate accessible instructional materials?

The Florida Diagnostic Learning and Resources System (FDLRS) Centers, accessible at <http://www.fdlrs.com>, are located throughout the state and have Human Resource Development (HRD) Specialists, Technology Specialists, and Regional Technology Specialists available to train and consult on accessible media for students with disabilities.

The FDLRS Technology Coordinating Unit (FDLRS TECH), accessible at <http://www.fdlrstech.com>, is a statewide resource center designed to assist Florida schools and educators to combine accessible media, assistive technology, instructional technology,

and Universal Design for Learning tools to increase student achievement. Resources are available online and through training and consultation.

Resource Materials and Technology Center for the Deaf and Hard-of-Hearing (RMTC-D/HH), accessible at <http://www.fsdb.k12.fl.us/rmc/>, is a statewide resource center serving teachers of the deaf and hard-of-hearing throughout Florida. The mission of the RMTC-D/HH is twofold. First, RMTC-D/HH gives teachers of deaf and hard-of-hearing students the technology assistance, training, and consultation they need to successfully integrate technology into their classroom routine. Second, RMTC-D/HH serves teachers and interpreters with a lending library of over 1,300 captioned and/or signed videotapes.

Florida Instructional Materials Center for the Visually Impaired (FIMC-VI), accessible at <http://www.fimcvi.org/>, is a statewide resource center designed to assist schools in obtaining specialized materials for students with visual impairments. Materials are produced by the Center staff, prepared by certified transcribers, and/or purchased by the Center. These materials are then loaned to schools within Florida. Consultation and training are also provided to instructional personnel throughout the state.

FIMC-VI has been designated as the Florida Authorized User for the National Instructional Materials Access Center and will provide NIMAS-derived materials for eligible students. Training and consultation services are also available.

FDLRS Technology State Loan Library (FDLRS-TSLL), accessible at <http://www.fdlrs-tsll.scps.k12.fl.us/>, is a statewide resource center for all Florida school districts, supporting the availability of assistive technology devices and software for short-term loan as part of the assistive technology assessment/evaluation process. Equipment categories include computer access, interfaces, mounting, communication devices, and others.

C. Obtaining Accessible Instructional Materials for Students

C-1. How do districts acquire accessible instructional materials for students with disabilities?

There are a variety of resources for accessible instructional materials. Districts can choose to require textbook publishers to make flexible digital versions (e.g., unlocked PDFs, etc.) of all textbooks available for purchase, or use online textbooks and websites that can be read by screen readers, enlarged, etc.

Several publishers offer textbooks in web-based formats. An assessment procedure is still needed to make sure any web-based format will meet a student's accessibility needs.

Examples of HTML and online textbooks include:

- McGraw-Hill http://www.mhln.com/Controller?ACTION=GET&MANAGER=ONLINECONTENT&OPERATION=TEMPURL&JSP=oc_urteacher.jsp
- Pearson http://media.pearsoncmg.com/ebookplus/cg/html_test/Biology/index.html
- Harcourt <http://www.eharcourtschool.com/preview/index.html>

Districts can also choose to contact the publisher for permission to create an accessible version of a particular student's textbook. Below are some example permission/inquiry websites for various publishers.

- Macmillan/McGraw-Hill/Glenco
http://www.mhhe.com/catalogs/cust_serv/permissions.mhtml
- Pearson/Prentice Hall http://www.phschool.com/about_pearson/rights.html
- Houghton Mifflin Harcourt <http://customercare.hmhco.com/gratis/gratis-cs.html>

Under the guidelines of Fair Use,² schools may choose to scan printed text to ensure students have an accessible copy, making sure the original copy is also checked out to that student and that appropriate print/digital management is being used. The four guidelines of Fair Use are:

- The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
- The nature of the copyrighted work
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole
- The effect of the use upon the potential market for, or value of, the copyrighted work

A district/school-based print and digital file management system can be critical to ensuring that the value of a copyrighted work has not been affected and the rights of the publisher/authors are protected. More information on the Fair Use law and guidelines can be found at <http://www.copyright.gov/fls/fl102.html> and on the University of North Carolina at Chapel Hill School of Education website at <http://www.learnnc.org/search?phrase=copyright+law+and+education>.

For many students, the use of digital/audio books or HTML-based text books from the publishers, printed materials scanned into digital format, online libraries (such as the Florida Electronic Library at <http://www.flelibrary.org/>), web-based instructional materials, and school-based materials are the primary resources available for accessible instructional materials. For *qualifying students* there are additional resources as follows.

- NIMAS and Florida NIMAS-Authorized Users – <http://www.fimcvi.org/>
 - NIMAS is a federally funded service that provides specialized formats (braille, large print, digital text, and audio) free of charge to eligible students. To qualify for NIMAS services a student must be unable to effectively read standard print due to a physical/sensory limitation or organic dysfunction. Examples include:
 - Blind or visual impairment
 - Physical/mobility limitations (e.g., cannot turn pages of a book)
 - Reading disability due to an organic dysfunction determined by a medical doctor
- Bookshare.org – <http://www.bookshare.org>
 - Bookshare.org is a vendor that has received federal funds to provide accessible materials to qualifying students free of charge. Available formats include DAISY books and braille digital format (or braille ready format [BRF]). A free text reader developed by Don Johnston, Inc., is available. To qualify for Bookshare services a

² Public Law 94-553, 90 Stat. 2541, Chapter 1, Section 107.

student must be unable to effectively read standard print due to a physical/sensory limitation or learning disability. Examples include:

- Blind or visual impairment
- Physical/mobility limitations (e.g., cannot turn pages of a book)
- Reading disability due to an organic dysfunction as diagnosed by a doctor of medicine
- Recording for the Blind and Dyslexic: Regional Unit of Florida (RFB&D)
 - http://www.rfb.org/Florida_Unit.htm
 - RFB&D produces accessible audio books. Qualifying students include students with visual disabilities, physical disabilities, learning disabilities, and other disabilities that make reading standard print effectively difficult or impossible.

It is important to note that neither Bookshare nor Recording for the Blind and Dyslexic can provide accessible textbooks for students who are not eligible for NIMAS under IDEA, nor can they provide any materials for students who are not eligible for materials/services under An Act to Provide Books for the Adult Blind of 1931 and its amendments. In order to provide accessible instructional materials for students who do not meet these eligibility criteria, districts will need to work with publishers to obtain flexible digital versions of textbooks.

C-2. Are students with disabilities who have Section 504 Plans also eligible for accessible instructional materials?

Students who have Section 504 Plans are not, by definition, eligible for materials derived from NIMAS files, as NIMAS is an IDEA provision. However, school districts are still required to provide FAPE for these students, in accordance with Section 504 of the Rehabilitation Act of 1973. Students who are visually impaired who are served with Section 504 Plans should be registered with FIMC-VI so that they can receive accessible instructional materials, as students with visual impairments and any type of plan (IEP, Section 504, individual family services plan [IFSP]) are eligible for federal quota funds. For students with other print disabilities, the suggestions given above for non-NIMAS-eligible students should assist with the provision of accessible instructional materials.

Students with Section 504 Plans may still be eligible under An Act to Provide Books for the Adult Blind of 1931 and its amendments. Resources such as the National Library Service for the Blind and Physically Handicapped, Bookshare, and Recording for the Blind and Dyslexic may be used for these students. For more information about this eligibility, please visit the National Library Service website at <http://www.loc.gov/nls/eligible.html>.

FLORIDA DEPARTMENT OF EDUCATION



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Commissioner of Education



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Technical Assistance Paper

Questions and Answers: National Instructional Materials Accessibility Standard (NIMAS)

Summary:

This technical assistance paper (TAP) provides information about the National Instructional Materials Accessibility Standard (NIMAS), including general definitions and guidelines for assisting the individual educational plan (IEP) teams in determining if a student requires accessible print instructional material. This document identifies which materials must be made accessible; outlines procedures for determining if a student qualifies as print disabled; suggests IEP content relating to a student's need for accessible, specialized formats of print instructional material; and provides information on resources available to the IEP team.

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A. Introduction and Background

A-1. What is the purpose of this technical assistance paper (TAP)?

The reauthorization of the Individuals with Disabilities Education Act (IDEA 2004) introduced the National Instructional Materials Accessibility Standard (NIMAS) and the National Instructional Materials Access Center (NIMAC) as a means of providing accessible instructional materials to eligible students with print disabilities in a timely manner [34 CFR 300.172(b)(3); 34 CFR 300.172(e)(1)(i); 34 CFR 300.210(b)(3)]. States must coordinate with the NIMAC in order to access NIMAS-conformant files, which may be used to produce instructional materials in a variety of formats. With the use of these files comes a responsibility on the part of the state educational agency (SEA) and local educational agency (LEA) to ensure that the materials produced from the files are being used appropriately, i.e., exclusively by those students determined eligible.

The individual educational plan (IEP) team is responsible for determining if the student requires materials in specialized formats. To guide that determination, the IEP team should review student information, such as the learning media assessment, current levels of performance, informal reading inventories, as well as the medical diagnosis and prognosis. Additionally, the IEP team should review all specialized formats and options for accessible instructional materials. If the IEP team determines that a student requires textbooks and other instructional materials in specialized formats, school districts have an obligation under IDEA to provide such appropriate accessible materials.

This technical assistance paper will help IEP teams determine if a student requires accessible print instructional material; identify what materials must be made accessible; outline procedures for determining if a student qualifies as print disabled; suggest IEP content relating to a student's need for accessible, specialized formats of print instructional material; and provide information on resources available to the IEP team.

B. Definitions

B-1. What are NIMAS and NIMAC?

NIMAS, the National Instructional Materials Accessibility Standard, is defined in IDEA, Section 674(e)(3)(B), as the standard established by the Secretary of Education to be used in the preparation of electronic files suitable for and used solely for efficient conversion into specialized formats. NIMAS refers to a collection of consistent and valid XML-based source files created by K-12 curriculum publishers. From these well-structured source files, accessible, student-ready, alternate-format versions of textbooks and core materials (e.g., braille, e-Text, Digital Talking Book) can subsequently be created and distributed to qualified students with disabilities. NIMAS files are not student-ready and must be converted or transcribed for student use.

NIMAC, the National Instructional Materials Access Center housed at the American Printing House for the Blind in Louisville, Kentucky, is responsible for:

- Providing access to print instructional materials, including textbooks, in accessible media to persons who are blind or other persons with print disabilities in elementary schools and secondary schools. Access to such materials must be free of charge in accordance with such terms and procedures as the NIMAC may prescribe.
- Developing, adopting, and publishing procedures to protect against copyright infringement, with respect to the print instructional materials provided under sections 612(a)(23) and 613(a)(6) of IDEA.

B-2. What is the definition of “print instructional materials?”

IDEA defines “print instructional materials” as printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a state education agency or school district for use by students in the classroom. [20 U.S.C. 1474(e)(3)(C)]

These materials are made accessible by converting them to specialized formats, such as braille, large print, audio, or digital text.

B-3. What is the definition of “specialized formats?”

In accordance with 34 CFR 300.172(e)(1)(iv), “specialized formats” means braille, audio, or digital text that is exclusively for use by persons who are blind or other persons with disabilities. Print instructional materials with specialized formats includes large print formats when such materials are distributed for use exclusively by individuals who are blind or other persons with disabilities. Specialized formats do not include altering the content (i.e., the complexity) of the print instructional material.

B-4 What is the Chafee Amendment?

The Chafee Amendment of 1996 (PL 104-197) amended “An Act to Provide Books for the Adult Blind” (1931) by making exception to the exclusive rights of a copyright holder. It allows an *authorized entity* to reproduce or distribute copies or recordings of a previously published, non-dramatic literary work (e.g. poetry, novels, and textbooks¹) in specialized formats exclusively for use by persons who are blind or other persons with disabilities. The Chafee Amendment defines “specialized formats,” and IDEA uses that definition.

*Please note: In order to be eligible for NIMAS-sourced materials, students must meet **both** eligibility requirements for exceptional student education **and** the Chafee amendment (see eligibility information in D-1).*

¹ U.S. Copyright Office. (n.d.). *Literary Works*. Retrieved October 31, 2008, from <http://www.copyright.gov/register/tx-examples.html>

C. Accessible Instructional Materials

C-1. Why are accessible print instructional materials important?

The goal for providing access to specialized formats for students with print disabilities is to improve learning outcomes and ensure students have the tools to make adequate progress. Specialized formats may be customized and support diverse student needs and preferences.

C-2. What options exist to help districts provide specialized formats for students with print disabilities?

For those students who qualify for materials produced under the NIMAS, the districts will work through an authorized user (AU) to access those materials. In Florida, the AU for providing materials for students with print disabilities is the Florida Instructional Materials Center for the Visually Impaired (FIMC-VI).

C-3. Are all instructional materials available through NIMAC?

Only those instructional materials published after August 2006 are available through NIMAC. For instructional materials published prior to August 2006, the LEA or FIMC-VI is responsible for obtaining the materials through outside vendors or publishers or for producing the materials in accessible formats itself. Strategies for producing instructional materials in accessible formats include, but are not limited to:

- Converting the textbooks to digital text using optical character recognition (OCR) technology for reading/listening with text to speech software
- Recording the textbook for audio rendition
- Copying the textbooks for large print
- Converting the text to digital format
- Transcribing the text to braille and the graphics to tactile graphics

C-4. Will schools, classrooms, and students have access to the NIMAS-conformant source files?

In Florida, NIMAS-conformant source files will not be distributed at the classroom, school, or district level, since these files require additional enhancements to make them appropriate for student use. ***Only FIMC-VI, the AU for Florida, will access the NIMAS source files and convert them to student-ready materials.***

C-5. Who will create accessible, “student-ready” versions of textbooks from NIMAS-conformant files?

Under contract with FIMC-VI, accessible, student-ready versions of textbooks will be created from NIMAS files by the following:

- National, third-party authorized entities such as Recording for the Blind & Dyslexic, American Printing House for the Blind, Bookshare.org, and Talking Tapes
- Florida Instructional Materials Center for the Visually Impaired
- Software developers and file conversion services
- Curriculum publishers (K–12 curriculum publishers may produce accessible alternate-format versions for direct sale to SEAs and LEAs; this workflow is referred to as the “market model.”)
- Accessible media producers, such as braille transcribers

C-6. Who is responsible for ordering materials from FIMC-VI for students with print disabilities?

Teachers of the visually impaired will continue to register students who are blind or visually impaired with FIMC-VI and place orders for instructional materials.

For eligible students with print disabilities, other than those with visual impairment, school districts shall identify digital rights managers (DRMs). District DRMs will be authorized to register students and order materials. Districts may appoint up to ten DRMs, depending on the size of the district.

D. Student Eligibility for NIMAS-sourced Materials

D-1. Which students qualify for the materials produced under NIMAS?

IDEA uses the eligibility criteria set forth in “An Act to Provide Books for the Adult Blind,” approved March 3, 1931, 2 U.S.C. 135a, for the purpose of determining which students are eligible to use instructional materials produced using files in accordance with NIMAS and housed at the NIMAC. Under existing copyright law, students unable to read print due to physical limitations—those with visual impairments, physical disabilities, and some with learning/reading disabilities—(once qualified by a physician) will be provided with access to NIMAS-derived materials through FIMC-VI. Please note that the “competent authority” for determining eligibility may be different depending on the student’s disability.² Competent authority is defined in 36 CFR 701.10(b)(2) – Library of Congress regulations related to the Act to Provide Books for the Adult Blind.

- **Blind or visually impaired**
Students who meet the qualifications for State Board Rule 6A-6.03014, Florida Administrative Code (F.A.C.), *Exceptional Student Education Eligibility for Students*

² National Library Service. (2006). NLS: Governing Legislation. Retrieved October 31, 2008, from <http://www.loc.gov/nls/eligible.html>.

Who Are Visually Impaired, are provided accessible instructional materials from FIMC-VI. LEAs should follow current district procedures for ordering braille, large print, digital text, or audio books for students with visual impairments.

Ophthalmologists and optometrists performing medical evaluations, in accordance with Rule 6A-6.03014, F.A.C., meet the definition of competent authority. In Florida, in accordance with Rule 6A-6.0331, F.A.C., *General Education Intervention Procedures, Identification, Evaluation, Reevaluation and the Initial Provision of Exceptional Education Services*, individuals providing evaluative data related to a student's specialized instruction and related services must be licensed or certified to practice in Florida.

- **Physically disabled**

Accessible instructional material must also be provided for students who are unable to use standard printed material because of physical limitations as determined by a competent authority. These are students who cannot hold printed textbooks and turn their pages. A competent authority is defined to include doctors of medicine, doctors of osteopathy, therapists, registered nurses, and institution and public welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents). In Florida, in accordance with Rule 6A-6.0331, F.A.C., *General Education Intervention Procedures, Identification, Evaluation, Reevaluation and the Initial Provision of Exceptional Education Services*, individuals providing evaluative data related to a student's specialized instruction and related services must be licensed or certified to practice in Florida.

- **Reading disabled**

Persons certified by a 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, qualify for NIMAS as "print-disabled." A competent authority must be a doctor of medicine or osteopathy, who may consult with practitioners in other disciplines. In Florida, in accordance with Rule 6A-6.0331, F.A.C., *General Education Intervention Procedures, Identification, Evaluation, Reevaluation and the Initial Provision of Exceptional Education Services*, individuals providing evaluative data related to a student's specialized instruction and related services must be licensed or certified to practice in Florida.

D-2. Are struggling readers or students with learning disabilities eligible for NIMAS materials?

Persons with reading disabilities, regardless of severity, that do not have physiological origins, may qualify for accessible instructional materials. However, these individuals **do not** qualify for NIMAS materials. For these students, the LEA is responsible for providing accessible instructional materials when the IEP team determines that the use of such materials is necessary to provide a free appropriate public education (FAPE). For students who exhibit nonorganic factors—such as emotional or environmental causes; intellectual or educational deficiencies; or other possible nonorganic or nonphysical causes, including but not limited to, learning disabilities, dyslexia, attention deficit disorder, attention deficit hyperactivity disorder, autism (autism spectrum disorder), or

mental retardation [intellectual disabilities]³—the LEA must take all reasonable steps to provide instructional materials in accessible formats in a timely manner. [34 CFR 300.172(3)]

D-3. How does the IEP team determine if a student needs instructional materials in specialized formats?

Regardless of the type of eligibility (i.e., NIMAS or IDEA), the IEP team must determine if the student requires instructional materials in specialized formats to provide FAPE.

The IEP team must:

- Determine that a student is unable to read print material in a normal manner. (Determination should be made through learning media assessments, informal reading inventories, current levels of performance, medical diagnosis, etc.)
- Ensure that the student is certified as print-disabled by a competent authority.
 - Has a competent authority certified that the student’s visual disability, even with the best possible correction, prevents the reading of standard printed materials?
 - Has a competent authority certified that a student’s physical disability prevents the student from reading or using standard printed materials?
 - Has a competent authority certified the student as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent the student from reading printed material in a normal manner?
- Determine the specialized format appropriate for the student.
 - In accordance with Rule 6A-6.03028, F.A.C., and 34 CFR 300.324(a)(2)(iii), in the case of a student who is blind or visually impaired, instruction in braille and the use of braille must be considered unless the IEP team determines, after an evaluation of the student’s reading and writing skills, needs, including future needs, and appropriate reading and writing media, that instruction in braille or the use of braille is not appropriate for the student.
 - For students with physical disabilities or who are print disabled, the IEP team should review student information, including but not limited to, a learning media assessment, informal reading inventories, and present level of performance. Additionally, the IEP team should consult with physical therapists, technology specialists, and reading coaches to determine the appropriate specialized format.

In accordance with section 1008.22(3)(c)6., Florida Statutes, determine if a parent must provide signed consent for a student to receive instructional modifications that would not be permitted on the statewide assessment.

³ National Library Service. (1997). *National Library Service Factsheets: Talking Books and Reading Disabilities (March 1997)*. Retrieved October 31, 2008, from <http://www.loc.gov/nls/reference/factsheets/readingdisabilities.html>

D-4. What information related to accessible instructional materials is documented in the IEP?

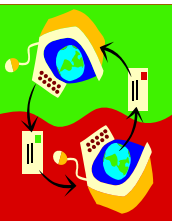
If a student with a print disability needs to use a specialized format, the IEP team should specify *each* of the following:

- The specific format(s) to be provided (braille, audio, digital text, large print, etc.)
- The services and/or assistive technology the student needs to use for the specialized format
- The individual(s) responsible for providing the specialized format
- Whether or not the format is required to be used in the student's home or in another setting in order for the student to receive FAPE

Appendices

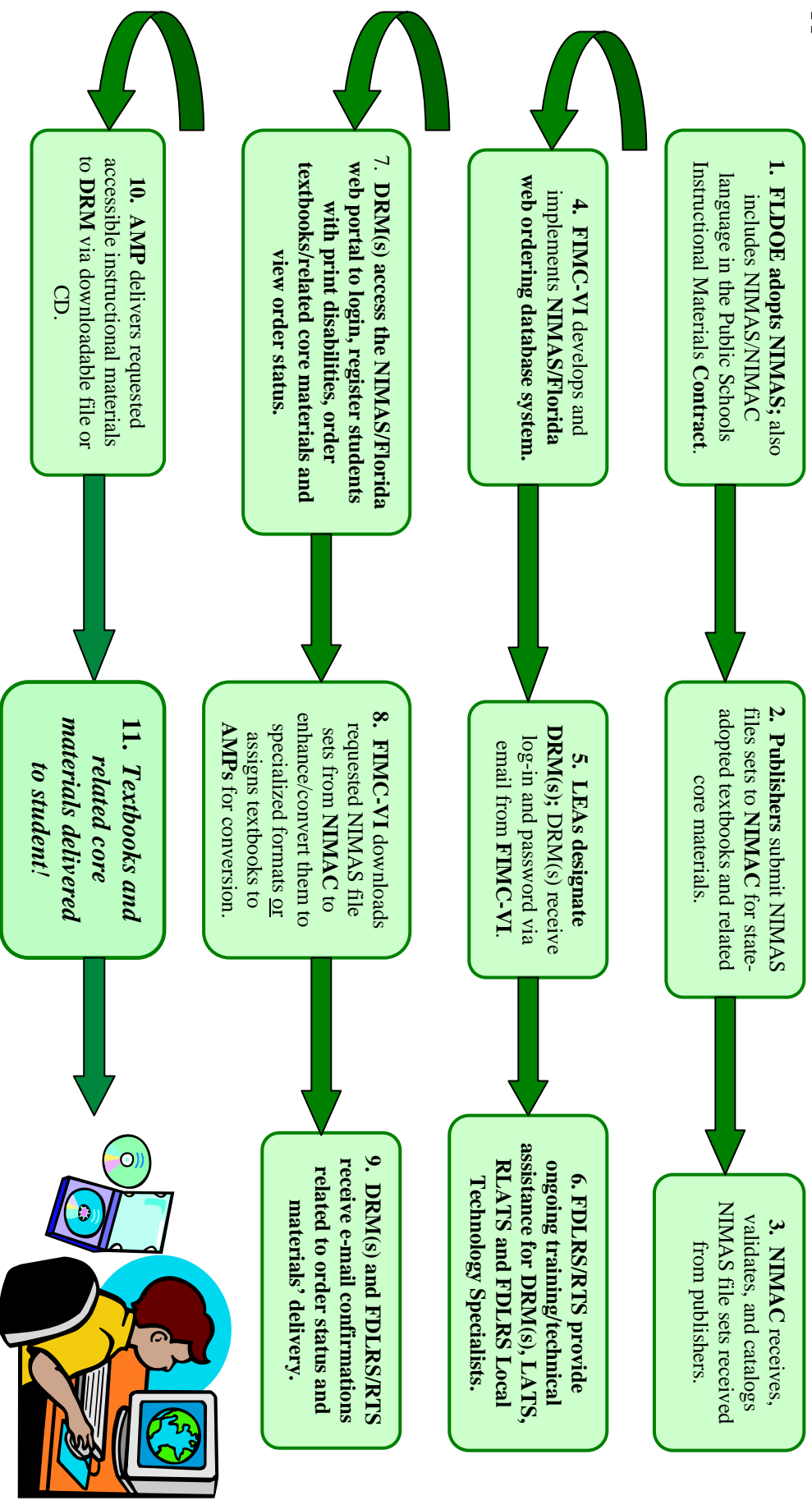
Appendix A – Additional Resources

- **NIMAC** – www.nimac.us
 - Frequently Asked Questions – http://www.nimac.us/faq_general.html
- **NIMAS – Center for Applied Special Technology (CAST)** – <http://www.nimas.cast.org>
 - Resources – <http://www.nimas.cast.org/about/resources>
 - Frequently Asked Questions – <http://nimas.cast.org/about/faq/index.html>
 - Alternate Formats and Learning Materials – http://nimas.cast.org/about/resources/alternate_formats
 - Disability-Specific Resources – <http://nimas.cast.org/about/resources/disability>
 - Accessible Materials and the Classroom – http://nimas.cast.org/about/resources/accessible_textbooks
- **NIMAS – Office of Special Education Programs**
 - Regulations – http://nimas.cast.org/system/files/OSEP.NIMAS_Summary.pdf
 - Topic Brief – http://idea.ed.gov/frontend_dev.php/object/fileDownload/model/TopicalBrief/field/WordFile/primary_key/12
 - Questions and Answers – http://idea.ed.gov/object/fileDownload/model/QaCorner/field/WordFile/primary_key/5
 - Video – <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CVideoClips%2C8%2C>
- **Chafee Amendment** – <http://www.loc.gov/nls/reference/factsheets/copyright.html>



Accessible Instructional Materials

Appendix B – NIMAS/Florida



Acronyms:

- AMPs:** Accessible Media Producers
- DRMs:** Digital Rights Managers (District or Area level)
- FDLRS** Local Technology Specialists
- FDLRS/RTS:** FDLRS/Regional Technology Specialists
- FIMC-VI:** Florida Instructional Materials Center for the Visually Impaired

- FLDOE:** Florida Department of Education
- LATS:** Local Assistive Technology Specialists (District or Area level)
- LEAs:** Local Education Agencies
- NIMAS:** National Instructional Materials Accessibility Standard
- NIMAC:** National Instructional Materials Access Center
- RLATS:** Regional Local Assistive Technology Specialists

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June 29, 2010

Dear College or University President:

We write to express concern on the part of the Department of Justice and the Department of Education that colleges and universities are using electronic book readers that are not accessible to students who are blind or have low vision and to seek your help in ensuring that this emerging technology is used in classroom settings in a manner that is permissible under federal law. A serious problem with some of these devices is that they lack an accessible text-to-speech function. Requiring use of an emerging technology in a classroom environment when the technology is inaccessible to an entire population of individuals with disabilities – individuals with visual disabilities – is discrimination prohibited by the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.

The Departments of Justice and Education share responsibility for protecting the rights of college and university students with disabilities. The Department of Justice is responsible for enforcement and implementation of title III of the ADA, which covers private colleges and universities, and the Departments of Justice and Education both have enforcement authority under title II of the ADA, which covers public universities. In addition, the Department of Education enforces Section 504 with respect to public and private colleges and universities that receive federal financial assistance from the Department of Education. As discussed below, the general requirements of Section 504 and the ADA reach equipment and technological devices when they are used by public entities or places of public accommodation as part of their programs, services, activities, goods, advantages, privileges, or accommodations.

Under title III, individuals with disabilities, including students with visual impairments, may not be discriminated against in the full and equal enjoyment of all of the goods and services of private colleges and universities; they must receive an equal opportunity to participate in and benefit from these goods and services; and they must not be provided different or separate goods or services unless doing so is necessary to ensure that access to the goods and services is equally as effective as that provided to others.¹ Under title II, qualified individuals with disabilities may not be excluded from participation in or denied the benefits of the services, programs, or activities of, nor subjected to discrimination by, public universities and colleges.² Both title II and Section 504 prohibit colleges and universities from affording individuals with disabilities with an opportunity to participate in or benefit from college and university aids,

¹ 28 C.F.R. § 36.201(a); 28 C.F.R. § 36.202(a); and 28 C.F.R. § 36.202(c) (2009).

² 28 C.F.R. § 35.130(a) (2009).

benefits, and services that is unequal to the opportunity afforded others.³ Similarly, individuals with disabilities must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or the same level of achievement as others.⁴ A college or university may provide an individual with a disability, or a class of individuals with disabilities, with a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit, or service is as effective as that provided to others.⁵

The Department of Justice recently entered into settlement agreements with colleges and universities that used the Kindle DX, an inaccessible, electronic book reader, in the classroom as part of a pilot study with Amazon.com, Inc. In summary, the universities agreed not to purchase, require, or recommend use of the Kindle DX, or any other dedicated electronic book reader, unless or until the device is fully accessible to individuals who are blind or have low vision, or the universities provide reasonable accommodation or modification so that a student can acquire the same information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use. The texts of these agreements may be viewed on the Department of Justice's ADA Web site, www.ada.gov. (To find these settlements on www.ada.gov, search for "Kindle.") Consistent with the relief obtained by the Department of Justice in those matters, the Department of Education has also resolved similar complaints against colleges and universities.

As officials of the agencies charged with enforcement and interpretation of the ADA and Section 504, we ask that you take steps to ensure that your college or university refrains from requiring the use of any electronic book reader, or other similar technology, in a teaching or classroom environment as long as the device remains inaccessible to individuals who are blind or have low vision. It is unacceptable for universities to use emerging technology without insisting that this technology be accessible to all students.

Congress found when enacting the ADA that individuals with disabilities were uniquely disadvantaged in American society in critical areas such as education.⁶ Providing individuals with disabilities full and equal access to educational opportunities is as essential today as it was when the ADA was passed. In a Proclamation for National Disability Employment Awareness Month, President Obama underscored the need to "*strengthen and expand* the educational opportunities for individuals with disabilities," noting that, "[i]f we are to build a world free from unnecessary barriers . . . we must ensure that every American receives an education that prepares him or her for future success." <http://www.whitehouse.gov/the-press-office/presidential-proclamation-national-disability-employment-awareness-month> (September 30, 2009) (emphasis added).

³ 28 C.F.R. § 35.130(b)(1)(ii) and 34 C.F.R. § 104.4(b)(1)(ii) (2009).

⁴ Cf. 28 C.F.R. § 35.130(b)(1)(iii) and 34 C.F.R. § 104.4(b)(1)(iii) (2009).

⁵ 28 C.F.R. § 35.130(b)(1)(iv) and 34 C.F.R. § 104.4(b)(1)(iv) (2009).

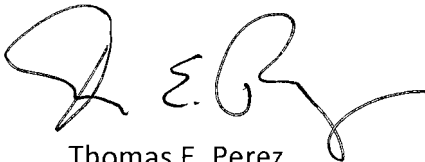
⁶ 42 U.S.C. § 12101(a) (1990).

Technology is the hallmark of the future, and technological competency is essential to preparing all students for future success. Emerging technologies are an educational resource that enhances learning for everyone, and perhaps especially for students with disabilities. Technological innovations have opened a virtual world of commerce, information, and education to many individuals with disabilities for whom access to the physical world remains challenging. Ensuring equal access to emerging technology in university and college classrooms is a means to the goal of full integration and equal educational opportunity for this nation's students with disabilities. With technological advances, procuring electronic book readers that are accessible should be neither costly nor difficult.

We would like to work with you to ensure that America's technological advances are used for the benefit of all students. The Department of Justice operates a toll-free, technical assistance line to answer questions with regard to the requirements of federal laws protecting the rights of individuals with disabilities. For technical assistance, please call (800) 514-0301 (voice) or (800) 514-0383 (TTY). Specialists are available Monday through Friday from 9:30 AM until 5:30 PM (ET) except for Thursday, when the hours are 12:30 PM until 5:30 PM. These specialists have been trained specifically to address questions regarding accessible electronic book readers. Colleges, universities, and other stakeholders can also contact the Department of Education's Office for Civil Rights for technical assistance by going to OCR's Web site at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

We appreciate your consideration of this essential educational issue and look forward to working with you to ensure that our nation's colleges and universities are fully accessible to individuals with disabilities.

Sincerely,



Thomas E. Perez
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice



Russlynn Ali
Assistant Secretary
for Civil Rights
U.S. Department of Education

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Electronic Book Reader Dear Colleague Letter: Questions and Answers about the Law, the Technology, and the Population Affected

What are the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973?

- ❖ The Americans with Disabilities Act of 1990 (ADA) is a federal law prohibiting discrimination on the basis of disability. The Department of Justice (DOJ) is responsible for enforcement and implementation of title III of the ADA, which covers private colleges and universities. DOJ and the Department of Education (ED) both have enforcement authority under title II of the ADA, which covers public universities.
- ❖ Section 504 of the Rehabilitation Act of 1973 is a federal law prohibiting discrimination on the basis of disability in all programs or activities that receive Federal financial assistance. ED enforces Section 504 with respect to public and private colleges and universities that receive Federal financial assistance from ED.

What are electronic book readers and what are accessible text-to-speech functions?

- ❖ Electronic book readers, or e-book readers, are handheld devices that allow users to read digital books and other materials by displaying content on screens (often referred to as “e-ink technology”). Though features vary, e-book readers can hold a digital library of books, provide access to online content like newspapers and magazines, allow the user to highlight passages, look up word definitions, and link to reference materials.
- ❖ Some e-book readers have accessible text-to-speech functions that allow users who are blind or have low vision to hear the on-screen content read aloud, navigate device controls, and select menu options.

How many students with disabilities could be affected by inaccessible electronic book readers?

- ❖ *Postsecondary Education (PSE)*: According to NCES, as of 2003-2004, about 230,000 PSE students are blind, have low vision, or have learning disabilities. (Such disabilities, which may involve difficulty accessing print information, are often called “print” disabilities).

- ❖ *Elementary and Secondary Education (ESE)*: In the 2006-2007 school year, NCES estimates 29,000 ESE students had visual impairments, including blindness; about 2.6 million ESE students had a specific learning disability, which likely includes some students with a “print” disability.

What does the Dear Colleague (DCL) do? Why did DOJ and ED issue it?

- ❖ The DCL expresses the position of DOJ and ED that it is impermissible under federal law for colleges and universities to use electronic book readers in classroom settings that are not accessible to students who are blind or have low vision, unless those students are provided an equally effective accommodation or reasonable modification that allows those students to receive all the educational benefits of the technology.
- ❖ The DCL highlights recent settlement agreements with several colleges and universities. In summary, the colleges and universities agreed not to purchase, require, or recommend use of the Kindle DX, or any other electronic book reader, unless or until the device is accessible, or unless the colleges and universities provide a reasonable accommodation or modification that is accessible to students who are blind or have low vision.
- ❖ The DCL encourages colleges and universities to take steps to ensure that they refrain from using electronic book readers, or other similar technology, that is inaccessible to individuals who are blind or have low vision to the extent that a reasonable accommodation or modification for this type of technology does not exist or is not available.
- ❖ Colleges and universities can obtain technical assistance by contacting the DOJ toll-free telephone line at (800) 514-0301 (voice) or (800) 514-0383 (TTY). Colleges and universities may also seek technical assistance by going to ED’s Office for Civil Rights website at <http://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm>.