

NIMAS in IDEA 2004

Background: On November 17, 2004, a bipartisan House-Senate conference committee approved a final special education reform bill that will reauthorize the Individuals with Disabilities Education Act (IDEA) and set in motion important reforms that will help teachers, parents, and schools ensure every student with disabilities receives a quality education. The bipartisan agreement is based on legislation authored by House Education Reform Subcommittee Chairman Mike Castle (R-DE) that passed the House in 2003 with bipartisan support. The measure includes reforms recommended in 2002 by President Bush's special education commission, as well as key elements of the IDEA reauthorization bill passed by the Senate in 2004. On December 3, 2004, the President signed IDEA 2004 and stated: "All students in America can learn. That's what all of us up here believe. All of us understand we have an obligation to make sure no child is left behind in America. So I'm honored to sign the Individuals with Disabilities Education Improvement Act of 2004, and once again thank the members for being here."

The Individuals with Disabilities Education Improvement Act of 2004

PART B--ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

SEC. 612. STATE ELIGIBILITY

(a) IN GENERAL--A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions

(23) ACCESS TO INSTRUCTIONAL MATERIALS

(A) IN GENERAL--The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register.

(B) RIGHTS OF STATE EDUCATIONAL AGENCY--Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(C) PREPARATION AND DELIVERY OF FILES--If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after the date of enactment of the Individuals with Disabilities Education

Improvement Act of 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to--

- (i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or
- (ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(D) ASSISTIVE TECHNOLOGY--In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

(E) DEFINITIONS--In this paragraph:

- **(i) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER**--The term 'National Instructional Materials Access Center' means the center established pursuant to section 674(e).
- **(ii) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD**--The term 'National Instructional Materials Accessibility Standard' has the meaning given the term in section 674(e)(3)(A).
- **(iii) SPECIALIZED FORMATS**--The term 'specialized formats' has the meaning given the term in section 674(e)(3)(D).

SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY

(a) IN GENERAL--A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

(6) PURCHASE OF INSTRUCTIONAL MATERIALS

(A) IN GENERAL--Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a State educational agency acquires print instructional materials under section 612(a)(23).

(B) RIGHTS OF LOCAL EDUCATIONAL AGENCY--Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational agency shall provide an assurance to the State educational agency that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

PART D--NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; MEDIA SERVICES; AND INSTRUCTIONAL MATERIALS.

(e) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER

(1) IN GENERAL--The Secretary shall establish and support, through the American Printing House for the Blind, a center to be known as the 'National Instructional Materials Access Center' not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

(2) DUTIES--The duties of the National Instructional Materials Access Center are the following:

- (A) To receive and maintain a catalog of print instructional materials prepared in the National Instructional Materials Accessibility Standard, as established by the Secretary, made available to such center by the textbook publishing industry, State educational agencies, and local educational agencies.
- (B) To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe.
- (C) To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided under sections 612(a)(23) and 613(a)(6).

(3) DEFINITIONS--In this subsection:

- **(A) BLIND OR OTHER PERSONS WITH PRINT DISABILITIES**--The term 'blind or other persons with print disabilities' means children served under this Act and who may qualify in accordance with the Act entitled 'An Act to provide books for the adult blind', approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.

- **(B) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD**--The term 'National Instructional Materials Accessibility Standard' means the standard established by the Secretary to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.
- **(C) PRINT INSTRUCTIONAL MATERIALS**--The term 'print instructional materials' means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.
- **(D) SPECIALIZED FORMATS**--The term 'specialized formats' has the meaning given the term in section 121(d)(3) of title 17, United States Code.

(4) **APPLICABILITY**--This subsection shall apply to print instructional materials published after the date on which the final rule establishing the National Instructional Materials Accessibility Standard was published in the Federal Register.

(5) **LIABILITY OF THE SECRETARY**--Nothing in this subsection shall be construed to establish a private right of action against the Secretary for failure to provide instructional materials directly, or for failure by the National Instructional Materials Access Center to perform the duties of such center, or to otherwise authorize a private right of action related to the performance by such center, including through the application of the rights of children and parents established under this Act.

(6) **INAPPLICABILITY**--Subsections (a) through (d) shall not apply to this subsection.

TITLE III--MISCELLANEOUS PROVISIONS

SEC. 306. COPYRIGHT

Section 121 of title 17, United States Code, is amended--

- (1) by redesignating subsection (c) as subsection (d);
- (2) by inserting after subsection (b) the following:
 - (c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a publisher of print instructional materials for use in elementary or secondary schools to create and distribute to the National Instructional Materials Access Center copies of the electronic files described in sections 612(a)(23)(C), 613(a)(6), and section 674(e) of the Individuals with Disabilities Education Act that contain the contents of print instructional materials using the National Instructional Material Accessibility Standard (as defined in section 674(e)(3) of that Act), if--

- (1) the inclusion of the contents of such print instructional materials is required by any State educational agency or local educational agency;
- (2) the publisher had the right to publish such print instructional materials in print formats; and
- (3) such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats."; and (3) in subsection (d), as redesignated by this section--
 - (A) in paragraph (2), by striking "and" after the semicolon; and
 - (B) by striking paragraph (3) and inserting the following:
 - (3) 'print instructional materials' has the meaning given under section 674(e)(3)(C) of the Individuals with Disabilities Education Act; and
 - (4) 'specialized formats' means--
 - (A) braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities; and
 - (B) with respect to print instructional materials, includes large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities.