

Introduction

The purpose of this document is to provide education personnel with information for implementing procedures to obtain alternate formats for students with print disabilities. In particular, this guidance document clarifies which students with a print disability due to an organic dysfunction are eligible for free alternate formats from the Accessible Instructional Materials-Virginia (AIM-VA) Center.

In the spring of 2010, the Accessible Instructional Materials Center of Virginia, in conjunction with the Virginia Department of Education (VDOE), issued a guidance document on reading disability due to organic dysfunction. Since that time, the Office of the Attorney General for the Commonwealth of Virginia has clarified that, contrary to the statement contained in the guidance document, in order to comply with copyright law, only a doctor of medicine may determine that a student has an organic dysfunction that qualifies the student to receive free accessible materials. Further explanation of organic dysfunction may be found in the document prepared for the National Center on Accessible Instructional Materials by Joanne Karger, J.D., Ed.D., June 12, 2012, "Analysis of the Term Reading Disability Resulting from Organic Dysfunction and its Relationship to the IDEA Category of Specific Learning Disability" available at http://aim.cast.org/learn/policy/federal/organic_dysfunction.

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Question and Answers

1. Question: What are alternate formats?

Answer: Alternate formats are described at the AIM-VA Web site http://kihd.gmu.edu/aim/aim_overview. This includes Braille, large print, audio, and a variety of digital text.

2. Question: How will Digital Rights Managers (DRMs) know which students qualify for AIM-VA materials? If a student doesn't qualify, what resources are available to consider?

Answer: The chart below provides information for accessing alternate formats for students with disabilities that are eligible to use the AIM-VA center and for those students who are not eligible to access alternate formats through AIM-VA.

| Eligibility | Qualifies under the Copyright Act with an Individualized Education Program (IEP) | Does <u>not</u> qualify under the Copyright Act (IEP) | Does <u>not</u> qualify under the Copyright Act (504 Plan) |
|--|---|--|---|
| Definition | Students with an IEP and who have a print disability based on blindness, visual impairment, or physical disability, or have a reading disability due to an organic dysfunction | Students who do not qualify under the Copyright Act, but whose print disability requires the use of accessible instructional materials in order for them to progress in the general education curriculum, as determined by their IEP | Students with a 504 Plan do not qualify under the Copyright Act. Refer to Superintendent's Memo #189-12, August 3, 2012 http://www.doe.virginia.gov/administrators/superintendents/memos/2012/189-12.shtml . Students served with a 504 Plan have a physical or mental impairment that substantially limits one or more major life activities, whose print disability requires the use of accessible instructional materials in order for them to progress in the general education curriculum, as determined by their 504 Plan. |
| Where to Acquire Specialized Formats? | AIM-VA, publishers, Learning Ally, Bookshare as well as other sources such as the Louis Database Accessible Materials and American Printing House (APH) File Repository http://louis.aph.org/catalog/CatalogoryInfo.aspx?cid=152 | Local educational agencies (LEAs) must contact publishers to obtain permission to put copyright material in an alternate format. | LEAs must contact publishers to obtain permission to put copyright material in an alternate format. |

- 3. Question:** Must school divisions obtain a diagnosis from a doctor specifically stating that the individual has a reading disability due to an organic dysfunction?

Answer: School divisions do not need a “diagnosis” as such, but must obtain a certification from a doctor of medicine or osteopathy, who may consult in making this certification with colleagues in related disciplines. Applicable law defines competent authority¹ as “doctors of medicine who may consult with colleagues in associated disciplines.” Reading specialists and other members of a student’s IEP team appropriately trained in the administration of valid assessments for the diagnosis of reading disabilities may be considered to be “colleagues in associated disciplines.” The doctor has the discretion as to what he or she needs to support the certification.

- 4. Question:** How should school divisions handle those students with a print disability who have already met the criteria to receive AIM-VA services before the Attorney General’s office recent clarification (i.e., must the school division seek retroactively documentation from a medical professional)?

Answer: In order to comply with the copyright law, the school division must have the correct documentation specified in the most recent directive, which would be certification from a medical professional.

- 5. Question:** Who is responsible for paying for the visit to the doctor to acquire the evaluation?

Answer: If accessible materials are required for the student to receive a free appropriate public education, then the school division is obligated to pay whatever costs are associated with obtaining those materials. This could include payment of the doctor’s fees or, if the parent gives informed written consent, to bill public or private insurance, any co-pay or similar payment.

- 6. Question:** Does a neuropsychologist’s evaluation stating the approved eligibility/verification count as “doctors of medicine”?

Answer: No because an individual who has a Ph.D. is not a “doctor of medicine,” unless the person is also an M.D.

- 7. Question:** If a student does not qualify as having an organic dysfunction, but his/her IEP team states that an alternate format is needed, how can a school division access the materials?

Answer: As indicated in the answer to question #2 (refer to the chart), alternate formats can be purchased through the publishers of the materials and other publishers such as Learning Ally, Bookshare, as well as other sources such as the Louis Database Accessible Materials and American Printing House (APH) File Repository. Local educational agencies (LEAs) must contact publishers to obtain permission to put copyright material in an alternate format.

¹ *Loans of Library Materials For Blind and Other Physically Handicapped Persons* [§36 CFR 701.6(b)(2)]

8. **Question:** Is there any guidance for what specific documentation school divisions need to find students eligible to receive accessible materials for a reading disability due to organic dysfunction?

Answer: The sample form below may be used for documentation of a student's eligibility.

SAMPLE
Eligibility Form (Chafee Eligibility Form)

Student: _____ **STI #:** _____ **Date of Birth:** _____
Grade: _____ **School Name:** _____ **School Division:** _____
Special Education Director: _____
Special Education Director E-mail: _____
Phone: _____
Digital Rights Manager (DRM): _____ **DRM E-mail:** _____
DRM Phone: _____

Use of the Accessible Instructional Materials Center of Virginia (AIM-VA) and/or the National Instructional Materials Accessibility Standards (NIMAS) materials is limited to students with a documented print disability in their Individualized Education Program (IEP). Under the Individuals with Disabilities Education Act (IDEA, 2004) students who are blind, visually impaired, have a physical disability or a reading disability may be qualified to access and use specialized formats under provisions of the Chafee Amendment to the Copyright Act.

As a result, school divisions must keep on file documentation of students' eligibility to use instructional materials produced by AIM-VA and/or from NIMAS files. Certification of a student's disability must be provided by a qualified professional, as explained below:

Definitions for Competent Authority:

Certification of a child having blindness, visual impairment, or physical limitations -
Doctors of medicine; doctors of osteopathy; ophthalmologists; optometrists; registered nurses; therapists; and professional staff of hospitals, institutions (including schools), public or private welfare agencies, or any person whose competence under specific circumstances is acceptable to the Library of Congress.

Certification of a child having a reading disability due to organic dysfunction -
Eligibility must be certified by doctors of medicine or doctors of osteopathy, who may consult with colleagues in associated disciplines.

I certify that this student is:

Check all that apply:

- blind or visually impaired
- physical disability
- reading disability due to organic dysfunction

Signature of Competent Authority

Printed Name and Title

Date