



The Association of Educational Publishers

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IDEA 2004 Regulations Published

Rules permit the use of Supplemental Materials in early intervening services
NIMAS adoption and materials more clearly defined

On August 3, 2006, the U.S. Department of Education released the rules that govern implementation of IDEA 2004. These rules had been in development for over a year, and many educational publishers were awaiting the publication. The rules will be published in the federal register, but there is a copy of the text on the USED website at <http://www.ed.gov/policy/speced/guid/idea/idea2004.html>.

There are two issues of specific concern to supplemental publishers.

- The use of supplemental materials in early intervening services for students who are in need of additional academic supports was confirmed by the Department, Section 300.226 (b).
- The implementation of NIMAS was clarified, giving states and publishers a better idea of what students can be served and what the provision of materials in a timely manner means to the state and publishers, Section 300.172.

During the summer of 2005 Charlene Gaynor, CEO of AEP, testified to the U.S. Congress regarding the importance of supplemental materials in the academic support of students who need such intervention to succeed in the general education environment. At issue was the use of up to 15% of IDEA Part B funds for early intervening services including the purchase of supplemental materials. As a result, the following language was added to the conference committee report:

Early intervening services should make use of supplemental instructional materials, where appropriate, to support student learning. Children targeted for early intervening services under IDEA are the very students who are most likely to need additional reinforcement to the core curriculum used in the regular classroom. These are in fact the additional instructional materials that have been developed to supplement and therefore strengthen the efficacy of comprehensive core curriculum.

This same language appears in the comments and discussion that give instruction to the rules published in the federal register and can be found in the comments to Section 300.226 on page 414. Supplemental publishers can now state with confidence to schools that their products qualify for purchase under IDEA Part B early intervening services.

AEP members should be congratulated for their part in keeping supplemental materials available for these vulnerable children. With the leadership of CEO Charlene Gaynor and the staff of Washington Partners, AEP was able to affect a positive outcome for our members. Members who participated in meetings with legislators and staff or provided comments during that period were key to this success. As we move forward in our work, this experience should be an encouragement to all who participated and those who are considering

participation in the work AEP will take on during the NCLB 2007 reauthorization.

While some NIMAS regulations were issued in July (these technical specifications will appear as appendix C to Part 300, National Instructional Materials Accessibility Standard), the complete rules were published along with the IDEA regulations on August 3. These additional rules address the states' responsibilities for adoption of NIMAS.

There were no major changes to the established time line and projected process for implementing the new policy. NIMAS files must be provided for materials published after August 19, 2006; the date by which all elements become effective is December 3, 2006. The states were also given some latitude for getting their programs to comply with the new policy. States are to adopt NIMAS policies in a timely manner as explained in the discussion of comments on p.448, "recognizing that the timelines and requirements for adopting new rules, policies, or procedures vary from state to state."

For publishers it is important to know that states that wish to comply with NIMAS policy will still be required to act by December 3, 2006. At that point, states will "require the publisher to prepare and, on or before delivery of the print instructional materials, provide the NIMAC with electronic files containing the content of the print instructional materials from the publisher that are produced in, or may be rendered in, specialized formats." This language in the discussion to the comments is not different from the general understanding of when publishers must provide the files and what to expect during the development of contracts or other agreements with school districts to purchase materials. It also reflects the timeline set by the IDEA statute that requires the law to take effect no later than two years from the date it became law December 3, 2004.

Some additional discussion regarding when the print instructional materials will be made available to students will also affect publishers who are providing accessible versions to schools. According to the regulations, "public agencies must take all reasonable steps to make those instructional materials available at the same time as instructional materials are provided to other children. Reasonable steps, for example, would include requiring publishers or other contractors to provide instructional materials in accessible formats by the beginning of the school year for children whom the public agency has reason to believe will be attending its schools." Specifically, this applies when the contractor agrees to provide an accessible format, not the NIMAS files. This does not add any additional burden to the publishers as they will still be required to deliver the files at the time of delivery of the product as stated in the contract or procurement instrument discussion.

Another clarification regarding what students will be able to take advantage of was provided in the discussion of comments on page 458. As of this publication, the students served will be "children who are blind, have visual disabilities, or are unable to read or use standard print materials because of physical limitations, and children who have reading disabilities that result from organic dysfunction." This will limit the number of potential students to those who are in the known universe of students with visual impairments and means that there will not be an immediate market for the production of materials in accessible formats resulting from these regulatory actions.

More information regarding the responsibilities of NIMAC and other comments can be found in pages 448-479 of the document.

AEP will continue to provide information and support to our members who could potentially be affected by NIMAS. We are interested in finding out what actions or information would be most beneficial to your business, and would like to know if schools are requiring the NIMAS file set from supplemental publishers during this time.