

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 75 INSTRUCTIONAL MATERIALS AND TECHNOLOGY
PART 4 RELATING TO THE IMPLEMENTATION OF THE BRAILLE ACCESS ACT

6.75.4.1 ISSUING AGENCY: Public Education Department
[6.75.4.1 NMAC – N, xxx]

6.75.4.2 SCOPE: All educational institutions providing services at the elementary and secondary level.
[6.75.4.2 NMAC – N, xxx]

6.75.4.3 STATUTORY AUTHORITY: This regulation is promulgated pursuant to Sections 9-24-8, 22-2-1 and 22-15-30 NMSA 1978 which directs the department to adopt guidelines consistent with the Braille Access Act for the implementation and administration of that act.
[6.75.4.3 NMAC – N, xxx]

6.75.4.4 DURATION: Permanent
[6.75.4.4 NMAC – N, xxx]

6.75.4.5 EFFECTIVE DATE: xxx, unless a later effective date is cited at the end of a section.
[6.75.4.5 NMAC – N, xxx]

6.75.4.6 OBJECTIVE: This regulation governs the procedures for the adoption, purchase, and delivery of instructional material in compliance with the Braille Access Act, Sections 22-15-26 to 22-15-31 NMSA 1978, through provision of alternate accessible format materials and incorporates the federal standards of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et seq. (IDEA).
[6.75.4.6 NMAC – N, xxx]

6.75.4.7 DEFINITIONS:

A. “Alternate accessible format” as used in the Braille Access Act has the same meaning as “specialized formats” as used in the IDEA and both terms mean one of several alternatives to traditional printed instructional materials, including but not limited to Braille, audio or digital text or large print formats.

B. “Department” means the public education department.

C. “Educational institution” means “public school”, including charter schools, or “state agency” or “state institution” as defined in Section 22-1-2 NMSA 1978.

D. “Educational purposes” means materials that are necessary for instruction of a student.

E. “Instructional materials” means textbooks, workbooks, teacher manuals or editions, blackline masters, transparencies, test packets, software, CD-ROMs, videotapes and audio materials.

F. “National instructional materials access center” or NIMAC means the center established pursuant to 20 U.S.C. 1474(e) of the IDEA.

G. “National instructional materials accessibility standard” or NIMAS means the standard established by the secretary of the United States department of education to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.

H. “Nontextual mathematics or science instruction materials” means mathematical or scientific symbols or notation.

I. “Structural integrity” means all of the printed instructional materials, including the text of the material, sidebars, table of contents, chapter headings and subheadings, footnotes, indexes, glossaries and bibliographies. Structural integrity need not include nontextual elements such as pictures, illustrations, graphs or charts. The publisher should include a brief textual description of any such nontextual element when it is practical to do so and mention of the nontextual element when a description is not practical.

J. “Student” means a blind or other person with print disabilities accepted, enrolled in or attending an educational institution who has been determined by the educational institution to need instructional materials in an alternate accessible format and shall include:

(1) blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter if visual field subtends an angular distance no greater than 20 degrees;

- (2) persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material;
- (3) persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations;
- (4) persons certified by 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.
- (5) “Competent authority” as used in this subsection is defined as follows:
 - (a) In cases of blindness, visual disability, or physical limitations “competent authority” is defined to include doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents).
 - (b) In the case of a reading disability from organic dysfunction, competent authority is defined as doctors of medicine who may consult with colleagues in associated disciplines.
- K. “Timely manner” means ten business days from the receipt by the authorized user of the NIMAS conformant file from NIMAC or in the case of an educational institution that chooses not to coordinate with the NIMAC, ten business days from the identification by the educational institution that the student needs printed instructional materials in an alternate accessible or specialized format. Partial receipt of instructional materials in alternate accessible or specialized formats shall be considered receipt in a timely manner if the material received covers the chapters in the instructional materials that has been or is being currently covered by the student’s class.

6.75.4.8 GENERAL REQUIREMENTS

- A. The department adopts the NIMAS for the purpose of providing instructional materials to blind persons or other persons with print disabilities in a timely manner.
- B. In consultation with representatives from educational institutions and publishers, the department shall ensure to the qualified student the provision of instructional materials that:
 - (1) are deemed essential or required for student success;
 - (2) meet definitions for nontextual mathematics or science instructional materials that use mathematical notations;
 - (3) maintain structural integrity and meet requirements for textual descriptions of pictures, illustrations, graphs and charts; and
 - (4) are available in an alternate accessible or specialized format.
- C. The department, through its instructional materials adoption process, shall require publishers to prepare and, on or before delivery of the printed instructional materials, provide to the NIMAC electronic files containing the content of the printed instructional materials using the NIMAS for all instructional material adopted by the secretary of the department after July 19, 2006.
- D. The department shall, pursuant to its contract process, terminate the contracts of publishers for failure to comply with this section.

6.75.4.9 REQUIREMENTS: RESPONSIBILITIES OF EDUCATIONAL INSTITUTIONS

- A. An educational institution is not required to coordinate with the NIMAC. If the educational institution chooses to coordinate with the NIMAC, the educational institution shall acquire instructional materials in the same manner and subject to the same conditions as provided in 6.75.4.8 NMAC.
- B. If an educational institution becomes a coordinating agency with NIMAC, it shall place its orders for instruction materials in alternate accessible or specialized formats through the persons responsible for coordinating services to students with disabilities with the central repository authorized by the department. The central repository shall serve as the authorized user and agent of the educational institution with NIMAC and it will have access to the NIMAC database and it may download NIMAS files in accordance with established agreements so that printed instructional materials can be efficiently converted to alternate accessible or specialized formats. The central repository will perform the conversion of the NIMAS files into the alternate accessible or specialized format and deliver it in a timely manner to the educational institution that ordered it.
- C. If the educational institution chooses not to coordinate with the NIMAC, the educational institution shall provide a written assurance to the department in its annual local IDEA application that the

educational institution shall provide instructional materials in an alternate accessible or specialized format to blind students or other students with print disabilities in a timely manner in an alternate accessible or specialized format.

D. Educational institutions, through the persons responsible for coordinating services to students with disabilities, must certify in writing to the central repository authorized by the department that:

- (1) the materials are deemed essential or required for student success;
- (2) an electronic copy of the materials will be used solely for the student's educational purposes; and
- (3) the student or educational institution will not copy, publish or in any other way distribute the instructional materials in alternate accessible or specialized formats for use by anyone other than the original student, except that the educational institution may provide the instructional materials to another qualifying student through a written agreement with the publisher.

E. No educational institution, its employees or its students shall authorize any use of instructional materials that would be inconsistent with the provisions of 17 U.S.C. Section 121 as amended by Title III, Section 306 of the IDEA.

[6.75.4.9 NMAC – N, xxx]

6.75.4.10 REQUIREMENTS: RESPONSIBILITIES OF PUBLISHERS

A. All publishers submitting instructional materials for adoption on the department's multiple list must agree through a signed contract with the department to provide, at no additional cost, NIMAS-conformant files of any printed instructional materials, within ten business days of delivery of the printed instructional materials to the publisher's New Mexico distribution point, to the NIMAC at the American printing house for the blind. The publisher must also agree that the NIMAS-conformant files provided to NIMAC include the latest corrections and revisions of the printed instructional materials.

B. Publishers may require written assurance from the educational institution that:

- (1) the alternate accessible or specialized formats of the printed instructional materials will be used solely for the student's educational purposes; and
- (2) the student or educational institution will not copy, publish or in any other way distribute the alternate accessible or specialized formats of printed instructional materials for use by anyone other than the original student, except that the educational institution may provide the instructional materials to another qualifying student through a written agreement with the publisher.

[6.75.4.10 NMAC – N, xxx]

6.75.4.11 COMPLAINTS AGAINST A PUBLISHER

A. A student or educational institution with a complaint against a publisher must submit the complaint in writing to the chief of the instructional materials bureau of the department if they believe that a publisher has failed to comply with a request under this rule.

B. The bureau chief shall investigate and provide the complainants and the publisher with notice of required compliance if warranted.

C. The publisher must respond in writing to the notice within ten (10) business days.

D. The department shall, pursuant to its contract process, terminate the contracts of publishers for failure to comply with their responsibilities under this rule.

[6.75.4.11 NMAC – N, xxx]

HISTORY OF 6.75.4 NMAC: [RESERVED]