



**UNITED STATES DEPARTMENT OF EDUCATION**  
**OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES**  
THE ASSISTANT SECRETARY

March 16, 2007

Mr. John Kelly  
President and CEO  
Recording for the Blind and Dyslexic National Headquarters  
20 Roszel Road  
Princeton, NJ 08540

Dear Mr. Kelly:

Thank you for your letter expressing your concerns that the Department should allow direct and complete access to the National Instructional Materials Accessibility Standard (NIMAS) files sent by publishers to the NIMAC (National Instructional Materials Access Center), and that the Department support such access to NIMAC by "National Authorized Entities."

As you are aware, section 612(a)(23) of the Individuals with Disabilities Education Act (IDEA) requires State Education Agencies (SEAs) that choose to coordinate with the NIMAC to enter into written contracts that require publishers to send NIMAS files sets of print instructional materials, such as textbooks, to the NIMAC. (Section 613(a)(6) requires the same process for Local Education Agencies (LEAs).) The Office of Special Education and Rehabilitative Services (OSERS) supports a NIMAC process that would achieve a more timely access to print instructional materials for students with print disabilities and yet would allow accessible media producers (AMPs) such as RFB&D, access to the NIMAS file sets for print instructional materials, including textbooks, in order to convert these files to specialized formats before there is a formal contract entered into by an SEA or LEA with a publisher of instructional materials. We refer to this process as "anticipatory access," because it will save a significant amount of time and will allow SEAs and LEAs to obtain access to the specialized formats shortly after entering into a contract with the publisher. Otherwise, SEAs and LEAs will needlessly wait for the publisher to send the materials in the NIMAS format to the NIMAC and then wait until an AMP downloads the NIMAS files and converts them to specialized formats. OSEP believes that failure to give AMPs anticipatory access will create a backup or jam in the process, which will ultimately undermine successful implementation of the NIMAC and NIMAS. Large, nationally recognized AMPs (such as American Printing House for the Blind (APH), RFB&D, and Bookshare) may believe that this access to files should be limited to them as "National Authorized Entities," but we have clearly indicated that ED cannot limit access in this way.

However, we endorse a system that can hopefully eliminate the expected bottleneck in the process, while not artificially restricting who may have access. Under the Chaffee

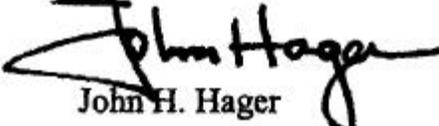
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amendment to the Copyright Act, an "authorized entity means a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities." These entities, who are commonly referred to as "Chaffee authorized entities," include, but are not limited to, the three largest AMPs (RFB&D, Bookshare, and APH). Prior to the IDEA amendments implementing the NIMAS and NIMAC, these Chaffee authorized entities were the only entities that had copyright protections to convert materials into specialized formats for use by blind and other persons with disabilities. Now, under section 674(e)(2)(c) of IDEA, the NIMAC has the authority "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)."

Thus, based upon the foregoing, we believe that the NIMAC could implement section 674(e)(2)(c) by allowing anticipatory access to NIMAC files by any Chaffee authorized entity because these entities are already protected from copyright infringement by virtue of the Copyright Act itself. However, once an SEA or LEA signs a contract with a publisher, any AMP designated by the SEA or LEA would then have access to the files for conversion into specialized formats. Pursuant to section 574(e)(2)(c), the NIMAC must adopt copyright procedures that would protect against copyright infringement by all AMPS (who may or may not be authorized entities protected from copyright infringement under Chaffee).

In conclusion, without naming RFB&D or any particular AMP a National Authorized Entity, we can provide the advantage of anticipatory access to all qualifying AMPs in order to facilitate the successful implementation of the NIMAC and NIMAS. As a result, RFB&D would have anticipatory and direct access to the NIMAS file sets deposited at the NIMAC. We will be working with NIMAC and all relevant parties on this issue in order to effect procedures in line with our goals of providing accessible instructional materials in a timely manner to elementary and secondary students who are blind or print disabled.

Sincerely,

  
John H. Hager