



# NIMAS Eligibility Update: Marrakesh & the New NLS Guidelines

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# Today's Presentation

- Background for the new NLS guidelines
- Three Marrakesh changes to U.S. copyright
- New NLS (and NIMAS) eligibility categories
- Competent Authority
- Next Steps for NIMAC
- Q&A

**\*This PowerPoint is available for you to keep for future reference.\***

# NIMAS Eligibility

# Eligibility in IDEA 2004

- In order for students to be eligible for NIMAS, IDEA 2004, Part D, Sec. 674 (e)(3)(A)<sup>1</sup> imposes two requirements:
  - The student must have an Individualized Education Program (IEP).
  - The student must have a qualifying disability.

# Qualifying Disability

- For the disability criterion of NIMAS eligibility, IDEA 2004 points to the NLS Guidelines.
- These are the regulations found at 36 CFR 701.6 related to ‘An Act to provide books for the adult blind.’
- On February 12, 2021, the NLS published updated guidelines<sup>2</sup> to align them with changes to U.S. copyright law made by the Marrakesh Treaty Implementation Act (MTIA).

# The Marrakesh Treaty

- The U.S. ratified the Marrakesh Treaty via the MTIA, effective May 8, 2019.
- The treaty facilitates the sharing of accessible materials across national borders, for use by eligible persons with disabilities.
- APH now participates in the Accessible Books Consortium (ABC), which is composed of authorized entities from 55 countries.
- “Less than 10% of published materials are accessible to blind or low vision people.”

# “Ripple Effect”

1. MTIA → Changes to US Copyright Law (Section 121 or “Chafee”)
2. Copyright Changes → Updated NLS Guidelines
3. Updates NLS Guidelines → Updated NIMAS eligibility criteria (and NIMAC agreements!)

# MTIA Changes to Copyright<sup>3</sup>

# Types of Works

1. Expanded the types of works allowed to be copied from nondramatic literary works to all literary works, plus musical works fixed in the form of text or notation.

# “accessible formats”

2. Changed the term “specialized formats,” the definition of which was limited to specific technologies, to “accessible formats,” which is defined more broadly as an “alternative manner or format” that allows an eligible person to have access to a work that is equivalent to a person without a disability.

# “eligible person”

3. Updated the term “blind or other persons with disabilities,” to “eligible person,” which is defined as someone who is either blind, has a “visual impairment or perceptual or reading disability” rendering them unable to read printed works “to substantially the same degree as a person without an impairment or disability,” or has a physical disability making them unable to hold or manipulate a book or focus or move their eyes to read.

**New NLS Guidelines =  
New NIMAS Eligibility**

# Eligibility: First Category

(b) *Eligibility.* (1) Individuals who meet the definition of “eligible person” in 17 U.S.C. 121<sup>4</sup> are eligible for NLS's loan services. An “eligible person” thus means an individual who, regardless of any other disability—

(i) Is blind;

# Eligibility: Second Category

(ii) Has a visual impairment or perceptual or reading disability that cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

# Eligibility: Third Category

(iii) Is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.

# Competent Authority

(2) Eligibility must be certified by one of the following: doctor of medicine, doctor of osteopathy, ophthalmologist, optometrist, psychologist, registered nurse, therapist, and professional staff of hospitals, institutions, and public or welfare agencies (such as an educator, a social worker, case worker, counselor, rehabilitation teacher, certified reading specialist, school psychologist, superintendent, or librarian).

# Reading Disabilities

- The new guidelines remove the requirement for certification by a medical doctor for those with reading disabilities.
- These individuals may now be certified by the same persons who are authorized to certify other print-disabled individuals for participation in the program.

# Back to IDEA 2004

# IDEA 2004 and MTIA

- IDEA 2004 has not yet been updated to align the language with MTIA.
- However, OSEP has instructed states to begin using the new terminology, advising that “[u]ntil such time as Congress makes technical amendments to the IDEA statute and the Department is able to make conforming technical amendments to the IDEA Part B regulations, States should rely on, and utilize, the terms and definitions as updated and implemented by the Marrakesh Treaty and found in the Copyright Act at 17 U.S.C § 121.”<sup>5</sup>

# NIMAC Agreements

- The NIMAC is currently in the process of revising its Coordination Agreement and Limitation of Use Agreement to reflect the updated NLS Guidelines.
- If you are a NIMAC Authorized User, Accessible Media Producer or State Coordinator, keep an eye out for the new agreement to appear in your Inbox in the next few weeks!

# Resources

1. [NIMAS Provisions in IDEA 2004](#)
2. [NLS Guidelines](#)
3. [Marrakesh Changes to US Copyright Law](#)
4. [Section 121 of Copyright Law](#)
5. [OSEP Memorandum 20-01](#)

# Appendix A: The Obsolete NLS Criteria

The Library of Congress regulations (36 CFR 701.6(b)(1)) related to 'An Act to provide books for the adult blind' provide that blind persons or other persons with print disabilities include:

1.3.1 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 of visual field subtends an angular distance no greater than 20 degrees.

1.3.2 Persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material.

1.3.3 Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.

1.3.4 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.

Competent authority is defined in 36 CFR 701.6(b)(2) as follows:

1.3.5 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).

1.3.6 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.

# Appendix B: The New NLS Criteria

(b) *Eligibility.* (1) Individuals who meet the definition of “eligible person” in 17 U.S.C. 121 are eligible for NLS’s loan services. An “eligible person” thus means an individual who, regardless of any other disability—

(i) Is blind;

(ii) Has a visual impairment or perceptual or reading disability that cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

(iii) Is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.

(2) Eligibility must be certified by one of the following: doctor of medicine, doctor of osteopathy, ophthalmologist, optometrist, psychologist, registered nurse, therapist, and professional staff of hospitals, institutions, and public or welfare agencies (such as an educator, a social worker, case worker, counselor, rehabilitation teacher, certified reading specialist, school psychologist, superintendent, or librarian).

# Contact us!

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