

Participation of Students with Disabilities in Education Reform The Legal Basis

prepared by the PEER Project



Today there are many national, state, and local school standards-based education reform efforts designed to improve student learning outcomes. The intended result of standards-based education reform is to ensure that all students, including students with disabilities, learn more.

This *Peer Information Brief* provides an overview of the strong legal basis for including students with disabilities in

all aspects of education reform. The legal framework is best understood in relation to the four essential steps to standards-based education reform:

1. Set the standards;
2. Develop the curriculum;
3. Design individual courses and instructional strategies; and
4. Assess the performance of schools and all students.

1. Set standards for all children, including children with disabilities

In standards-based education reform, high standards are developed as a first step to improve education. Standards are seen as a way to come to a common understanding of what students should be expected to know. When linked to the curriculum, they provide guidance to teachers about what they should be teaching. While standards differ greatly from state to state, they share a common purpose:

they lay out the essential core of knowledge of what students should be expected to know and be able to do. Standards are based on the belief that *all* students can achieve to higher levels if expectations are set high, if standards are clearly defined, and if teaching is designed to support the achievement of students. Most states have already set standards or are in the process of doing so.





Legal Basis for participation of students with disabilities in standards

Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act Amendments of 1997

(IDEA) emphasize the critical importance of maintaining high standards and expectations for the academic achievement of students with disabilities.¹ IDEA has always required schools to make available to students with disabilities a “free appropriate public education” which “*meet[s] the standards of the State educational agency*”² (emphasis added). Thus, a child’s special education program must be individually tailored to ensure that the student can achieve state standards. Many provisions of the IDEA amendments underscore the requirement to ensure that children with disabilities have opportunities to achieve the goals of the general curriculum, which will reflect state standards.

Section 504 and the ADA

Two other federal laws, Section 504 of the *Rehabilitation Act of 1973* (Section 504) and Title II of the *Americans with Disabilities Act (ADA)*, also require schools to establish a uniform set of standards for all students, including students with disabilities. These laws, which prohibit discrimination on the basis of disability, require schools to provide equal educational opportunities to children with disabilities. Schools violate Section 504 and the ADA

regulations whenever students with disabilities are denied the benefits of standards-based education reform. Standards-based education reform aims to attain high quality educational results by identifying desired learning results for students, shaping curricula and instruction accordingly, and holding schools accountable for the results. If states or school systems adopt standards for general education, then students with disabilities have the right to an education based on these same standards. Failure to apply these standards to students with disabilities is discriminatory and denies them “comparable benefits and services.”³

Goals 2000

States and districts seeking federal funding under the *Goals 2000: Educate America Act* must develop a plan for establishing content and performance standards for “all students.”⁴ Goals 2000 requires states to ensure that the standards apply to all students. Children with disabilities must fully participate in standards-based education reform with an expectation of achieving high standards.

Title I

Under Title I of the *Elementary and Secondary Education Act of 1965*, federal funds are allocated to school districts serving significant numbers of children who are low-income. Title I requires that a state’s standards must apply to all eligible students, i.e., students attending a school-wide Title I program or those students

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¹ U.S.C. 1400(c)(5), as amended.

² See former 20 U.S.C. 1401(a)(18), amended at 20 U.S.C. 1401(8).

³ 29 U.S.C. 794; 34 C.F.R. 104.4(b)(1), 104.33(b)(1)(i); 28 C.F.R. 35.130(b)(1).

⁴ 20 U.S.C. 5802(a)(1), 5881(15), 5882(a), 5886(c)(n).

eligible under Title I who participate in targeted-assistance programs. The standards for students with disabilities and

low-income, low-achieving students covered by Title I must be as high as any other standards established by the state.⁵

2. Develop curriculum: ensure students with disabilities participate in general curriculum

States or local districts develop curriculum that embodies the standards. Curriculum describes what learning should be accomplished in specific grades. In some states, standards and curriculum are virtually the same.

Legal basis for participation of students with disabilities in the general curriculum

Individuals with Disabilities Education Act (IDEA)

The 1997 amendments to IDEA contain repeated references to the requirement to include students with disabilities in the general curriculum. The law specifically requires IEP teams to develop concrete strategies for linking IEP goals and objectives to the general curriculum. At least one member of the IEP team must be knowledgeable about the general curriculum. In addition, evaluation and re-evaluations must address the services and interventions necessary for the child to participate, as appropriate, in the general curriculum. Parents must also receive periodic progress reports as often as parents of nondisabled children. These reports must address the child's progress in meeting the goals of the IEP which reflect the general curriculum. They should also report on the extent that progress is sufficient to achieve the goals by the end of the year.

Section 504 and the ADA

Section 504 and the ADA prohibit discrimination on the basis of disability. They also require public elementary and secondary schools to ensure that students with disabilities participate in the general education curriculum. Curriculum is designed to reflect the standards and deliver a quality education. Therefore, students with disabilities must be provided with opportunities to participate fully in the general curriculum with courses and instructional strategies that assist them to achieve the results expected for all other students. Otherwise, they will be denied comparable benefits and services, in violation of Section 504 and the ADA. Programs based on watered-down curriculum and lowered expectations are inconsistent with the requirements of these laws.⁶



Goals 2000

In Goals 2000, Congress emphasizes that “all students are entitled to participate in a broad and challenging curriculum”⁷ (emphasis added). States applying for Goals 2000 funds must submit a plan

⁵ 20 U.S.C. 6311(b)(1)(B), (C), (E).

⁶ 34 C.F.R. 104.4(b)(2); 28 C.F.R. 35.130(b)(iii).

⁷ 20 U.S.C. 5802(a).



which includes strategies for aligning state or local curriculum with the state standards.⁸ The plan must then further describe how all students, including students with disabilities, will increase their educational achievement and meet the goals of the curriculum and standards.

Title I

Title I requires schools to provide all students with a challenging and effective curriculum. The purpose of Title I is to

provide students with an “enriched and accelerated educational program,” with a challenging academic curriculum.⁹ Students should not be taught watered-down curricula.

Rather, all students, including students with disabilities, must participate in high-quality general education curriculum which will teach the academic skills necessary to achieve the state standards.

3. Design individual courses and instructional strategies; ensure students with disabilities receive necessary courses, instruction, supports, and services

Individual schools and teachers decide on the day-to-day content of courses and instruction, including the materials and methods best suited for their students. The courses and instruction are designed to ensure that all students progress in the curriculum and meet the standards.

Legal basis for provision of courses, instruction, supports, and services necessary to progress in general curriculum and achieve standards.

Individuals with Disabilities Education Act (IDEA)

The IEP team, which must now include at least one regular education teacher of the child (if the child is or may be participating in the regular education environment), will

determine the need for any additional instructional strategies and services necessary for the child to reach the academic goals and standards established for all children. When IEP goals and objectives reflect the standards and results established through education reform, parents can use the IEP to ensure provision of the instruction and services needed to achieve those goals and objectives. IEPs must now describe the specific special education, related services, supplementary aids and services, program modifications or supports necessary for the child to progress in the general curriculum. The IEP must include specific services provided directly to the child, as well as supports provided to school personnel, (i.e., consultation services) to ensure progress.¹⁰

⁸ 20 U.S.C. 5807(c)(1)(C).

⁹ 20 U.S.C. 6301(d).

¹⁰ See 20 U.S.C. 1414(d)(1)(A)(iii) (I) - (III) for additional requirements.

Section 504 and the ADA

These laws require schools to provide the educational services and supports necessary to meet the individual needs of a child with a disability as well as the needs of other students are met.¹¹ Children must receive the accommodations, modifications, and services necessary to receive equal educational opportunities to participate fully in the general curriculum and achieve the state standards. It is discriminatory for school systems to adopt “criteria or methods of administration”¹² (policies and practices) which limit opportunities for students with disabilities to learn the standards. To avoid such discrimination, school systems must identify and examine any policies or practices that may have the effect of limiting students’ access to the courses and instruction necessary to participate fully in the curriculum and meet the standards.

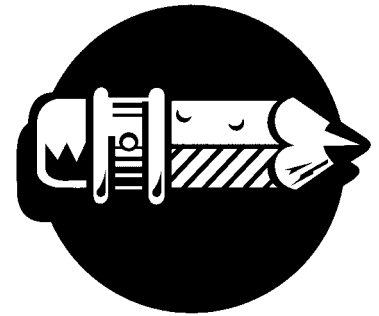
Goals 2000

Under Goals 2000, state improvement plans require that strategies are identified and developed for improving teaching and learning and students’ mastery of skills in core content areas. State plans must also include a process for developing the capability of teachers to provide high quality instruction. This

could include a process for “developing, selecting or recommending instructional materials, including general equitable and multicultural materials, and technology to provide *all* students the opportunity to meet state . . . standards.”¹³ Local school improvement plans must also include a strategy for improving teaching and learning.

Title I

Title I requires schools to provide effectively designed individual assistance to students who are having difficulty achieving the state standards. These requirements apply equally to students with disabilities covered by Title I. The law sets up a system, reliant on parent participation, to ensure that students have effective instructional strategies to meet their needs. Instructional strategies in schoolwide programs must identify students who are having difficulty mastering standards and provide effective and timely additional assistance to these students. Increased instructional time, such as extended school year and before or after-school programs are to be considered. Targeted-assistance programs are also required to provide effective instructional strategies and extended learning time.¹⁴



4. Assess the performance of schools and all students, including students with disabilities

Assessments based on standards are an important step toward being able to measure the actual results of education and

hold educators accountable for the results of schooling. In the context of education

¹¹ 34 C.F.R. 104.4(b)(1), 28 U.S.C. 35.130(b)(1).

¹² 34 C.F.R. 104.4(b)(4); 28 C.F.R. 35.130(b)(3).

¹³ 20 U.S.C. 5886(c)(2)(C).

¹⁴ 20 U.S.C. 6314(b), Schoolwide Programs; 6315(c) Targeted Assistance Schools.



reform, assessment refers to tests given to large groups of students. Usually these assessments are “paper and pencil” tests given under uniform conditions that help school districts and states find out how well they have done in teaching students what they are expected to know, i.e., the content and skills set forth in the standards.

In some cases, these tests have “high stakes” for students. Test scores may be used to make decisions about high school graduation or promotion to the next grade. These assessments are different from special education evaluations used to determine an individual child’s eligibility for special education and the child’s specific learning needs.

Legal basis for participation of students with disabilities in state and districtwide assessments.

Individuals with Disabilities Education Act (IDEA)

The 1997 amendments to IDEA recognize the importance of assessment as a way to improve educational results for students with disabilities. Therefore, IDEA requires the participation of students with disabilities in state and districtwide assessment programs. Every child’s IEP must now address participation in state or districtwide assessments of student achievement. Students with disabilities have a right to receive accommodations and individual modifications in the administration of state and districtwide assessments necessary to participate in assessments.

For a relatively small percentage of students, usually those with more complex disabilities, the IEP team may decide an alternate assessment is necessary. The state department of education must make available to the public and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, among other data, the performance of children with disabilities on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000) if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

The IEP team must decide how a child with a disability will participate in the assessment: under usual conditions (without accommodations); with accommodations, as specified in the IEP; or with an alternate assessment. The scores of students with disabilities must be reported together with the scores of all other students as well as separately, in order to track the progress of different groups of students.¹⁵

Section 504 and the ADA

Section 504 and the ADA provide protections which ensure that students with disabilities participate in the assessment process. The purpose of education reform assessments is to gather information that shows whether schools are successfully teaching students the standards. With exclusion from assessment, schools are

¹⁵ 20 U.S.C. 1414(d)(1)(A)(v)(I-II); 1412(a)(17).

not held accountable for the quality of education students with disabilities receive. Excluded students are denied the benefits of this critical aspect of education reform, in violation of the requirement to provide comparable benefits and services. These laws also require schools to provide any reasonable accommodations necessary to participate in assessments.

Goals 2000

Goals 2000 requires states to develop a plan for implementing state assessments which are aligned with the state's standards. All students, including students with diverse learning needs must participate in the state assessment. Adaptations and accommodations must be provided if necessary.¹⁶

¹⁶ 20 U.S.C. 5886(c)(1)(B).

Title I

Title I requires states to develop assessments in order to keep track of how well districts and schools are teaching students to meet state standards. Students with disabilities covered by Title I are entitled to participate in the state assessments required by this law. Schools must provide students with disabilities with accommodations necessary for testing. Any school operating a schoolwide program is required to conduct a comprehensive needs assessment of all students, including students with disabilities, based on their performance in meeting state standards.¹⁷

¹⁷ 20 U.S.C. 631(b)(3)(F)(i), (ii), 6315(b)(3)(1).