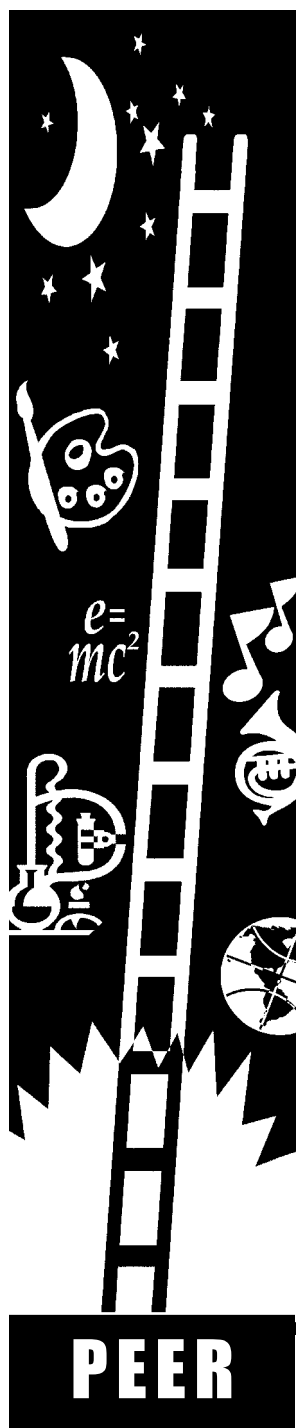


# Opportunity to Learn and Education Reform

## Ensuring Access to Effective Education for All Students

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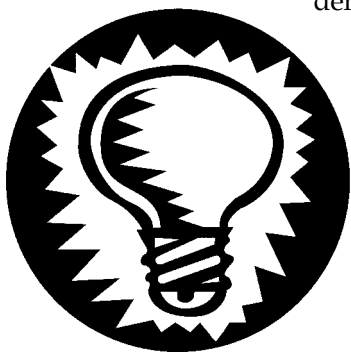
### Introduction

Today states and school districts throughout the nation are at different stages in implementing standards-based education reform. Standards-based education reform is designed to improve the quality of students' educational outcomes by setting standards based on desired knowledge and competencies, aligning curricula and instruction with the standards, measuring whether schools and local educational agencies (LEAs) are making progress toward enabling all students to meet the challenging standards, and holding them publicly accountable, in part, through reporting requirements. Consistent with Title I of the *Elementary and Secondary Education Act*,<sup>1</sup> *Goals 2000: Educate America Act*<sup>2</sup> and many state education reform statutes, these content and performance standards apply to all students. There is no exception for students who are educationally and economically disadvantaged, have limited English proficiency, or have mild, moderate,

or severe disabilities.<sup>3</sup> Once a standards-based education strategy is adopted by a state under either federal or state law, the strategy must be applied to the education of all children. Any failure to provide students with disabilities its benefits violates their civil rights.<sup>4</sup>

Content and performance standards adopted by states and sometimes individual school districts describe what students are expected to know and be able to do. After content and performance standards are developed and agreed upon, schools must align curricula and instruction with the standards. Through large-scale assessments, it is possible to measure the progress schools and LEAs are making toward enabling all students to meet the challenging standards. Assessment based on the standards is a way to hold schools accountable, provide teachers with information about the curriculum, methods of instruction, and inequities in resources – all of which contribute to children being





denied access to learning opportunities.

If appropriately developed and used, individual assessments may also provide teachers and parents with feedback about how individual children are progressing in reaching the standards that all students are expected to meet.

This *PEER Information Brief* discusses “opportunity-to-learn” requirements, another key component of standards-based education reform. Standards and assessments can bring about meaningful educational change only if combined with requirements that ensure *all* students’ access to learning and to the kind of learning opportunities they need to reach the standards being measured.

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### Opportunity to Learn, or Ensuring Access to Knowledge

Opportunity-to-learn requirements address strategies, services, and supports designed to ensure that all students have a fair chance to learn the knowledge and skills set forth in the state standards.

Opportunity-to-learn requirements can include:

- curricula modified as needed to achieve state standards,
- instructional materials and methods,
- class size and structure,
- individual assistance,
- supportive services,
- teacher training,
- professional development,

- adequate funding, and
- teacher self-assessments and peer reviews of practice to monitor the use of appropriate interventions.

The above supports are needed for students to have equal access to high quality education. Unless equity concerns are addressed, inequities created, for example, by poor curriculum, tracking, inadequate funding, and unqualified teachers will persist and increase with implementation of standards-based reform. To ensure equity and excellence for all students and to close the achievement gap between advantaged and disadvantaged students, schools must address opportunity-to-learn requirements.

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### Goals 2000: Educate America Act

The 1994 enactment of *Goals 2000: Educate America Act* marked the culmination of an earlier legislative effort begun by President Bush and initially spearheaded by the National Governors Association

led by then Governor William Clinton. Although Congress chose not to enact enforceable opportunity-to-learn standards, Goals 2000 has stimulated state efforts to improve educational results for students

by pushing states, as a condition for receiving federal funds, to adopt learning standards. Under Title III of Goals 2000, state improvement plans require strategies to be identified and developed for improving teaching and learning and students' mastery of basic and advanced skills in core content areas. The state improvement plan must include content and performance standards for all students. Furthermore, they must demonstrate that state assessments, curricula, instructional materials, teacher training, monitoring, and accountability measures are all aligned with and designed to enable students to attain the content and performance standards.

Ninety percent (90%) of a state's Goals 2000 funding passes through to local school districts. To receive the funds, school districts must compete for grants to implement local school improvement plans. The local plans must "reflect the

state improvement plan priorities" and "include a strategy for -

1. ensuring that all students have a fair opportunity to learn;
2. improving teaching and learning;
3. improving governance and management;
4. generating, maintaining, and strengthening parent and community involvement; and
5. expanding improvements throughout the local educational agency."<sup>5</sup>

School districts must use 85% of the funds to develop and implement individual school improvement plans. A minimum of half the funds received by the local school districts must be distributed to schools serving high percentages of low-income and/or low-achieving students.<sup>6</sup>



## Title I of the Elementary and Secondary Education Act

Title I, a program that allocates federal funds to school districts serving significant numbers of children who are from areas with high concentrations of low-income families, contains more rigorous opportunity-to-learn requirements than Goals 2000. It requires participating schools to work in partnership with parents to provide:

- an accelerated and enriched curriculum,
- high quality teaching staff, who have opportunities for professional development, and

- effective intervention for students having trouble meeting the high standards.<sup>7</sup>

Amended in 1994, Title I imposes duties on states, school districts, and schools that establish a framework for education reform:

- high state standards,
- programming that pertains to school readiness,
- curriculum,
- instructional methods,
- program structure,



- staff training and professional development,
- individual assistance,
- performance assessment, and
- improvement and enforcement activities.

Under Title I, any standards that a state has already adopted or is developing, for example under state education reform or Goals 2000, must apply to all students.<sup>8</sup> In other words, the standards expected to be attained by 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. Schoolwide programs must identify individual students having difficulty mastering any of the identified standards and provide identified students with timely and effective assistance.<sup>9</sup> Schoolwide and targeted-assistance programs must demonstrate sufficient

gains in the performance of all students being served, including students with disabilities and students who are low-income or have limited English proficiency.<sup>10</sup>

Under Title I, states must implement valid, multiple methods for assessing each child, at least annually, to determine the child's extent of mastery of the standards.<sup>11</sup> If schools or districts fail to make sufficient annual progress to enable students to reach proficient and advanced levels of performance,<sup>12</sup> they must develop and implement improvement steps.<sup>13</sup> School-parent compacts and school plans, jointly developed with parents, must describe what the school will provide (the opportunities to learn) to assist the students to meet the standards, how teachers and parents will communicate, and how the parent will support student learning. The district plan identifies how staff development and technical assistance are to be provided.<sup>14</sup>

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## State Constitutional Provisions and State Education Reform Statutes

Opportunity-to-learn requirements can also be derived from the requirements of some state constitutions and state education reform statutes. Students' right to quality education can be found in most state constitutions, frequently as a duty to provide an "adequate" or "thorough and efficient" public education. These constitutional requirements have often been raised when a state's system of financing public education has been challenged in court. In this context, the highest courts of

numerous states have said that the education clauses of their state constitution define a constitutional right to education that is not limited to school finance.

For example, in *Rose v. Council for Better Education, Inc.*,<sup>15</sup> the Kentucky Supreme Court found that children have a constitutional right to an adequate education. The court also defined an "adequate education" as one which develops the following seven capabilities:

- communication skills necessary to function in a complex and changing civilization;
- knowledge to make economic, social, and political choices;
- understanding of governmental processes as they affect the community, state, and nation;
- sufficient self-knowledge and knowledge of one's mental and physical wellness;
- sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
- sufficient preparation to choose to pursue one's life work intelligently; and
- skills enabling students to compete favorably with students in other states.<sup>16</sup>

The court held that sufficient funding is necessary to provide each child an adequate education. Following the decision, the legislature enacted the *Kentucky Education Reform Act* establishing a detailed standards-based reform framework. Kentucky provides a good example of how successful state constitutional litigation can spawn state legislative standards.

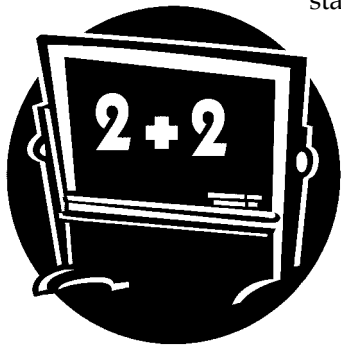
## Section 504 and the Americans with Disabilities Act

For almost 25 years, under the *Individuals with Disabilities Education Act (IDEA)*, students with disabilities have been guaranteed the right to have available to them a free, appropriate public education, to participate, to the maximum extent appropriate, and to be educated in regular classes with their nondisabled peers.<sup>17</sup> Moreover, students with disabilities have certain parallel rights, as well as the right not to be discriminated against, under Section 504 of the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act (ADA)*. Under these civil rights laws and their regulations, it is illegal for schools to discriminate on the basis of disability by, for example:

- providing an opportunity to participate or benefit from an aid, benefit, or service that is unequal to the opportunity provided others;
- providing an aid, benefit, or service that is not as effective as that provided to others; or
- providing different or separate benefits or services, unless it is necessary to provide aid, benefits, or services that are as effective as those provided to others<sup>18</sup>

In the context of standards-based education reform, these laws can be used to require states and school districts to assist students with disabilities to master the core curriculum that is aligned to the standards set for all students. When students with disabilities do not receive an appropriate education “consistent with state education agency





standards<sup>19</sup> and are denied “specialized instruction” with such supplementary aids and services as needed to benefit from the general

curriculum aligned to the standards set for all students, their rights under Section 504, ADA, and IDEA are violated.<sup>20</sup>

## Individuals with Disabilities Education Act (IDEA)

In enacting the *IDEA Amendments of 1997*, Congress expressly emphasized the provision of high quality education to students with disabilities through their participation in the general curriculum<sup>21</sup> and standards-based education reform.<sup>22</sup> Students with disabilities must be provided an opportunity to be involved and progress in the general curriculum, and must be provided with appropriate accommodations, modifications, and services consistent with their individual needs, to facilitate their involvement and progress. Significantly, in IDEA (§1412(a)(5)(A)) the right to be educated in the regular educational environment to the maximum extent appropriate embraces access to what is taught in the regular classroom as well as physical presence. Therefore, all students with disabilities, including students in restrictive programs, must be given meaningful opportunities to participate in the general curriculum. Furthermore, states must establish goals for the performance of students with disabilities that “are consistent, to the maximum extent appropriate, with other goals and standards for children established by the state.”<sup>23</sup> This means that states cannot establish separate and weaker standards for students with disabilities. Rather, each state must set “performance indicators” to assess how it is doing in educating students with disabilities. At a minimum the state’s indicators must include performance on

assessments, drop-out rates, and graduation rates. Every two years the state must report its performance on meeting these indicators.<sup>24</sup>

The *IDEA Amendments of 1997* underscore that a student’s Individualized Education Program (IEP) is a critical tool for attaining state content and performance standards. Consequently, the IEP must be designed to address the student’s disability-related educational needs as necessary to enable the child to meet the standards established by the state for all students. In developing a student’s IEP, consideration must be given to the full range of special education instructional supports and supplementary aids and services necessary to enable the student to learn what all other students are expected to know and be able to do.<sup>25</sup> More specifically, under the *IDEA Amendments of 1997*, the IEP must include, for example, a statement of:

- the child’s present level of educational performance, including how the student’s disability affects involvement and progress in the general curriculum;
- measurable annual goals, including benchmarks or short-term objectives that will enable the child to be involved and progress in the general curriculum;
- special education and related services and supplementary aids and services the student needs to be involved and progress in the general

curriculum and reach other IEP goals;

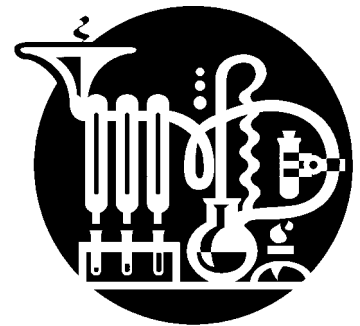
- program modifications and supports for school personnel (teachers, aides, etc.) that are necessary to ensure that the student advances appropriately toward attaining the IEP goals and progresses in the general education curriculum;<sup>26</sup> and
- modifications in the administration of state or districtwide assessments of student achievement.<sup>27</sup>

In addition, special education evaluation and re-evaluation must include information about the special education, related services, and strategies necessary for a student with a disability to be involved and progress in the general curriculum.<sup>28</sup> Similarly, in IEP reviews, the IEP team must address the child’s lack of expected progress toward the annual goals and in the general curriculum, where appropriate.<sup>29</sup> This requirement helps to ensure that IEP teams continually address the services, strategies, and supports necessary for the student to attain the standards.

Generally, parents of children with disabilities will be better able to monitor whether

schools are providing their children an opportunity to learn the standards with the periodic progress reports required by IDEA. Schools must inform parents of children with disabilities, on a periodic basis, about their child’s progress in meeting the goals of the general curriculum and in meeting all other IEP goals and objectives. Schools must also indicate the extent to which that progress is sufficient to enable the child to achieve the IEP goals by the end of the year. Parents must be regularly informed at least as often as parents of nondisabled children are informed about their children’s progress.

Finally, states can apply for state improvement grants under the *IDEA Amendments of 1997* specifically for the purpose of “improv[ing] educational and transitional services and results for children with disabilities” to respond to demands from changing demographics, social policies, labor, and economic markets,<sup>30</sup> as well as to assist the state to “facilitate lasting systemic change” of benefit to all students.<sup>31</sup>



## Endnotes

<sup>1</sup> 20 U.S.C. 6301 *et seq.*

<sup>2</sup> 20 U.S.C. 5801 *et seq.*

<sup>3</sup> 20 U.S.C. 6301(b)(3), 6312(b)(1), 6315(b)(2)(A), 20 U.S.C. 5802(a)(1), 5881(15), 5881(15), 5882(a), 5886(c), (n).

<sup>4</sup> *Individuals with Disabilities Education Act Amendments of 1997*, 20 U.S.C. 1412(a)(16), (17); Section 504 of the *Rehabilitation Act of 1973*, 34 C.F.R. 104.4(b)(1), 104.33(b)(1)(i); and the *Americans with Disabilities Act*, 28 C.F.R. 35.130(b)(1).

<sup>5</sup> 20 U.S.C. 5889(a)(3) (emphasis added).

<sup>6</sup> 20 U.S.C. 5894.

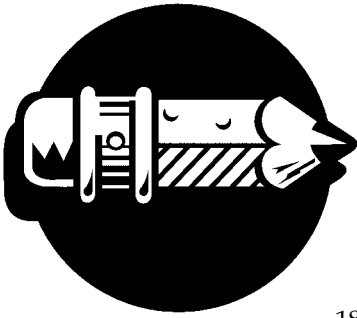
<sup>7</sup> 20 U.S.C. 6314, 6315, and 6319.

<sup>8</sup> See 20 U.S.C. 6311 (b)(1)(B), (C).

<sup>9</sup> 20 U.S.C. 6301(d); 20 U.S.C. 6314(b)(1)(H).

<sup>10</sup> 20 U.S.C. 6314(b)(1)(H)(i); 6314(b)(1)(B); 6315(c).

<sup>11</sup> 20 U.S.C. 6311(b).



<sup>12</sup> 20 U.S.C. 6311(b)(2)(B)(i).

<sup>13</sup> 20 U.S.C 6314(b)(1)(H)(iii); 20 U.S.C. 6315(c)(2)(B).

<sup>14</sup> 20 U.S.C. 6319(a)(2).

<sup>15</sup> 790 S.W.2d 186 (Ky. 1989).

<sup>16</sup> *Id.*, at 198.

<sup>17</sup> 20 U.S.C. 1412(a)(5)(A).

<sup>18</sup> 34 C.F.R 104.4(b)(i)-(iv); 34 C.F.R. 104.4(b); 28 C.F.R. 35.130(b)(1)(ii)-(iv); 28 C.F.R. 35.130(b)(3).

<sup>19</sup> As defined under 20 U.S.C. 1401(8)(B), (C) a “free appropriate public education” requires special education and related services that “meet the standards of the State education agency” and “include an appropriate preschool, elementary, or secondary education in the State involved.”

<sup>20</sup> 34 C.F.R. 104.4(b)(1) prohibits the provision to students with disabilities of “an aid, benefit or service that is not as effective as that provided to others.”

<sup>21</sup> 20 U.S.C. 1414(d).

<sup>22</sup> 20 U.S.C. 1451(a)(6), 1471(a).

<sup>23</sup> 20 U.S.C. 1412(a)(16).

<sup>24</sup> 20 U.S.C. 1412(a)(17).

<sup>25</sup> 20 U.S.C. 1401(8)(B), 1401(11), 1414(b)(2), (c)(B)(iv), 1414(d)(1)(A), 1412(a)(14), incorporating by reference 20 U.S.C. 1453(c)(3)(D)(vii). 1413(a)(3)(A).

<sup>26</sup> 20 U.S.C. 1414(d)(1)(A)(i) - (iii).

<sup>27</sup> 20 U.S.C 1414(d)(1)(A)(v)(I).

<sup>28</sup> 20 U.S.C. 1414(b)(2), (c)(1)(B)(iv).

<sup>29</sup> 20 U.S.C. 1414(d)(4)(A).

<sup>30</sup> 20 U.S.C. 1451(a)(1).

<sup>31</sup> 20 U.S.C. 1451(a)(2).

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