

The Right to a High-Quality Education for All Students, Including Students with Disabilities

Presentation to South Coastal Counties Legal Services Education Practice Group

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Goals of the Workshop

- To provide an overview of the key provisions in Title I/NCLB, IDEA, and Section 504 that comprise the right to a high-quality education for SWD.
- To demonstrate what legal service attorneys and advocates need to know to make sure that their clients have an opportunity to learn to high standards.

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Purpose of No Child Left Behind

- "...to ensure that all children have a fair, equal and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments."

20 U.S.C. § 6301

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NCLB → Who is covered?

- Creates a framework at state, district, school levels for ensuring all students, including SWD, become proficient in knowledge and skills identified in state standards.
- Applies to all states*, school districts and schools that accept federal Title I funds. (*All states accept Title I funds; 90% LEAs receive some Title I funds)
- Applies differently to schools that receive Title I funds than to schools that do not.

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NCLB - Single State System of Accountability

- Challenging state content & achievement standards describing what all students should know & be able to do.
- Multiple measures for assessing whether every student has reached "proficiency" based on those standards.
- Report cards & other public reporting of data by school, school district disaggregated by race, ethnicity, LEP, disability, low income.
- System of interventions/sanctions based on school's (district and state overall) making "adequate yearly progress" (AYP).

Basic Premises of NCLB

Serve as Backdrop to IDEA 2004

- All children can learn to a high level.
- Achievement gaps between higher and lower achieving students, including students with disabilities, are not acceptable.
- Educational system is accountable for closing that gap by having highly qualified teachers provide effective instruction aligned to standards, and timely interventions to struggling learners.
- No child shall be left behind.
- Parent involvement is crucial.

Individuals With Disabilities Education Improvement Act of 2004: Purposes of the Act

- Ensure that all SWD are provided FAPE designed to meet their unique needs and prepare them for further education, employment and independent living.
- Ensure that the rights of SWD and their parents are protected.
- Assist states in the implementation of a comprehensive, coordinated system of early intervention services.
- Ensure that educators and parents have the necessary tools to improve educational results.
- Assess and ensure the effectiveness of efforts to educate SWD.

20 U.S.C. § 1400(d)

Section 504 of the Rehabilitation Act of 1973

- "No otherwise qualified individual with a disability... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance..."

29 U.S.C. § 794(a)

Legally-Grounded Components of a High-Quality Education

1. Standards
2. Curriculum
3. Instruction
4. Appropriate Interventions and Assistance
5. Assessments
6. High-Stakes Decisions
7. Participants in School Decision-Making

Framework for Understanding the Components of a High-Quality Education

1. **Standards:** What should students learn? What do parents and schools want students to learn?
2. **Curriculum:** Are all students being taught a curriculum that is aligned with state standards and the school's learning goals?

Framework for Understanding the Components of a High-Quality Education (cont'd)

3. **Instruction:** Do the instructional methods enable students to reach the state standards and the school's learning goals?
4. **Appropriate Interventions and Assistance:** Are students who experience difficulty in mastering state standards and the school's learning goals provided timely and effective interventions and assistance?

Framework for Understanding the Components of a High-Quality Education (cont'd)

5. **Assessments:** Are students given regular and ongoing assessments of what they know and can do?
6. **High-Stakes Decisions:** How are important decisions being made about students?
7. **Participants in School Decision-Making:** What is the role of various stakeholders in school decision-making?

1. Standards

What should students learn?

What do parents and schools want students to learn?

Standards:

- Describe high-level knowledge and skills that all students should learn.
- Are consistent with what successful adults do when they are using their minds well.
- Are essential for success in an increasingly complex workplace.

Legal Basis for Standards

NCLB

- Each state must adopt challenging content & achievement standards that are the same for all schools and children.

20 U.S.C. § 6311(b)(1)(A)-(B)

IDEA

- FAPE means: special education and related services that meet the standards of the State educational agency.

20 U.S.C. § 1401(9)(B)

Legal Basis for Standards (cont'd): Right to Comparable Aids, Benefits, and Services under Section 504

Section 504 regulations prohibit schools from:

- Denying SWD the opportunity to participate in or benefit from an aid, benefit, or service;
- Affording SWD an opportunity to participate in or benefit from that is not equal to that afforded others;
- Providing an aid, benefit, or service to SWD that is not as effective as that provided to others;
- Providing different or separate aids, benefits, or services to SWD unless necessary to be as effective as those provided to others.

34 C.F.R. § 104.4(b)(1)

Why Do Standards Matter?

- Without high standards for all, students learn different things from school to school and from teacher to teacher based on:
 - Placement in different “track” assignments.
 - Race, limited English proficiency, or disability.
 - Limited expectations.
 - Lack of adequate professional development.
- All children have a right to learn to use their minds well. Setting higher standards in all schools and classes can make this happen.

Why Are Standards Important for My Client?

- Does my client's educational program allow him/her the opportunity to meet state standards?
- Does my client's educational program reflect high expectations?

Two Kinds of Standards Required by NCLB

Content Standards

- Specify what all students are expected to know and be able to do.
- Contain coherent and rigorous content.
- Encourage the teaching of advanced skills.

20 U.S.C. § 6311(b)(1)(D)(i)

Achievement Standards

- Tell us how well students are mastering the content standards.
- Are aligned with content standards.
- Describe at least three levels of achievement.

20 U.S.C. § 6311(b)(1)(D)(ii)

Massachusetts Curriculum Frameworks

- Divided into subject areas (e.g., ELA, Math) and strands (content areas within each subject).
- **General standards:** Broad statements outlining what students should know and be able to do.
- **Learning standards:** Specific goals geared toward different grade levels.

Example from ELA Curriculum Frameworks

General Standard 19: Students will write with a clear focus, coherent organization, and sufficient detail.

Learning Standards:

Grade Level	Learning Standards (Imaginative/Literary Writing)
Grades 1-2	Write or dictate stories that have a beginning, middle, and end.
Grades 3-4	Write stories that have a beginning, middle, and end and contain details of setting.
Grades 5-6	Write stories or scripts containing the basic elements of fiction.
Grades 7-8	Write stories or scripts with well-developed characters, setting, dialogue, clear conflict and resolution, and sufficient descriptive detail.

Achievement Standards Say: How Well a Student Is Expected To Perform

- ✓ The student's essay states a main thought or purpose.
- ✓ The main ideas are presented in a logical way.
- ✓ Each idea is expanded with supporting details,
- ✓ Using vivid words.
- ✓ Grammar and spelling are correct.

2. Curriculum

Are *ALL* students being taught a curriculum that is aligned with state standards and the school's learning goals?

Curriculum =

- "The overall plan for instruction adopted by a school or school system. Its purpose is to guide instructional activities and provide consistency of expectations, content, methods, and outcomes" (Hitchcock, Meyer, Rose, and Jackson, 2002)
- The "what" of education; the content teachers teach and students learn (Nolet & McLaughlin, 2000)

Legal Basis for High-Quality Curriculum

NCLB

- Goal of statute – ensure "high-quality... curriculum." 20 U.S.C. § 6301(1).
- Schoolwide program plan – must contain schoolwide reform strategies that "help provide an accelerated and enriched curriculum." 20 U.S.C. § 6314(b)(1)(B)(ii).
- School-parent compact – must "describe the school's responsibility to provide high-quality curriculum and instruction in a supportive and effective learning environment that enables the children served under this part to meet the State's student academic achievement standards." 20 U.S.C. § 6318(d)(1).

Legal Basis for High-Quality Curriculum (cont'd)

IDEA: Access to the General Education Curriculum

- "Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible..."

20 U.S.C. § 1400(c)(5)(A)

Legal Basis for High-Quality Curriculum (cont'd)

- Goal of special education – “to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.” 34 C.F.R. § 300.39(b)(3)(ii).
- General curriculum = “the same curriculum as for nondisabled children.” 34 C.F.R. § 300.320(a)(1)(i).
- Connection between AGC and FAPE

Legal Basis for High-Quality Curriculum (cont'd)

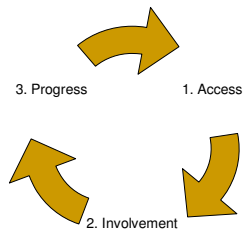
IEP Statements: Involvement & Progress

- Present levels of academic achievement [and functional performance], including how the disability affects involvement & progress in the GC.
- Measurable annual goals, including academic [and functional], to enable the child to be involved in & make progress in the GC.
- Special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and the program modifications or supports for school personnel that will be provided for the child to be involved in & make progress in the GC.

20 U.S.C. §§ 1414(d)(1)(A)(i)(I), (II), (IV)

Legal Basis for High-Quality Curriculum (cont'd)

Cycle of Access to the General Education Curriculum



Research on IEPs

- For many years, IEPs came to be synonymous with a separate curriculum; special education personnel lacked knowledge of GC (Pugach & Warger, 1993).
- Was difficult to evaluate educational performance of SWD because IEPs did not reflect the GC (Brauen, O'Reilly, & Moore, 1994).
- IEPs were too broadly focused, too long, incoherent and not linked to the GC; IEP goals consisted of broad-sweeping statements that lacked individualization; IEPs not consistent with what was actually happening in the classroom (Giangreco, Dennis, Edelman, & Cloninger, 1994).

Standards-Based IEPs

- Knowledge of content standards for student's age and grade
- +
- Child-specific information, including impact of disability and gaps between actual performance and grade-level expectations

IEP Goals

- Pegged to mastery level of content standards as the minimum expectation.
- Identify underlying skills needed to reach specific components of the content standards.
- Prioritized based on which goal will have greatest impact on student progress.

What Should a School's High-Quality Curriculum Look Like?

- Is the school's curriculum aligned with the state's curriculum frameworks?
- Is the curriculum challenging, age and grade appropriate, requiring authentic performance for all students?

Curriculum (cont'd)

- Is the school's vision for all students connected to authentic instruction and achievement?
- Is the expectation that all students learn to high standards shared by teachers, parents and students?
- Does the curriculum promote equity and excellence for all?

3. Instruction

Do the teaching and instructional methods enable students to reach the state standards and the school's learning goals?

What do we know about effective instruction?

- ❑ Effective instruction addresses the range of multiple and varied learning needs of all students in the classroom (differentiated instruction).
- ❑ Highly qualified teachers possess appropriate credentials and the substantive knowledge and skills to teach the course material.

Effective Instruction (cont'd)

- ❑ Effective teachers are given ongoing training and support to help all students learn.
- ❑ Professional development opportunities should prepare teachers to provide effective instruction and to teach a range of diverse students, including students with disabilities and students with limited English proficiency.

Definition of "Specially Designed Instruction"

Adapting, as appropriate to the needs of an eligible child... the content, methodology, or delivery of instruction:

- To address the unique needs of the child that result from the child's disability
- To ensure access of the child to the general education curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 C.F.R. § 300.39(b)(3)

Criteria or Methods of Administration

Section 504 regulations prohibit schools from using "criteria or methods of administration" that:

- Have the effect of discriminating against SWD; or
- Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the educational program for SWD.

34 C.F.R. § 104.4(b)(4)

Where Should SWD Receive Instruction?

- In the least restrictive environment (“LRE”) – i.e., to the maximum extent appropriate, SWD are to be educated alongside their nondisabled peers.
20 U.S.C. § 1412(a)(5)(A)
- IEP must explain extent, if any, to which child will not participate in regular class.
20 U.S.C. § 1414(d)(1)(A)(i)(V)
- Special education is a service NOT a place.
20 U.S.C. § 1400(c)(5)(C)
- Districts must have continuum of placement options.
34 C.F.R. § 300.115.

Research on Inclusion

- Creates opportunities for interaction and socialization (GAO, 1994; Fryxell & Kennedy, 1995; McDonnell, 1991).
- Equips SWD with skills they can use when they leave school; exposes SWD to more challenging curriculum (Jorgenson, 1998).
- Provides SWD the opportunity to score higher on reading and math tests (SEELS, 2005).
- Leads teachers to reconceptualize the learning environment to address multiple and varied needs of all students (Meyer & Rose, 2005).
- Benefits students without disabilities and the broader school community (Gruner, 2005; Salend & Duhaney, 1999).

Improved Teacher Quality to Improve Instruction & Learning for ALL

- NCLB requires all teachers to be “highly qualified” by the end of the 2005-2006 SY must have (1) a bachelor’s degree (2) full state certification or licensure (3) prove that they know each subject they teach.
20 U.S.C. § 7801(23)
- Paraprofessionals in Title I programs/schools must have minimum of 2 yrs in college or pass a skills test. Paraprofessionals cannot provide instruction unless directly supervised by a HQ teacher.
20 U.S.C. § 6602(4)

Improved Teacher Quality in Providing Special Education

- Special education teachers must be fully certified in special education or hold state license; at minimum a bachelor’s degree. 20 U.S.C. § 1401(10)(B).
- Special education teachers providing direct instruction in “core academic subject areas” must be certified in the discipline and be able to demonstrate content based knowledge in the subject they teach by end of 2005-06 school year. 20 U.S.C. §§ 1401(10)(D); 1412(a)(14)(C).
- Special education teachers who provide only “consultation” to HQ teachers – e.g., adapting curricula, using behavioral supports, selecting accommodations, helping with study skills – do not have to demonstrate subject matter competency. 71 F.R. 46557-46558 (Aug. 14, 2006).

4. Appropriate Interventions/Assistance

Are students who experience difficulty in mastering the state standards and the school's learning goals provided timely and effective interventions and assistance?

- Are all students struggling academically given the opportunity to receive additional assistance?
- Are students with disabilities provided the necessary special education and related services to enable them to have meaningful participation in the general education curriculum?
- Are students with limited English proficiency provided the necessary supports to enable them to learn what all students are expected to learn?

Legal Basis for Individualized Assistance - NCLB

Schoolwide program plan must include:

- "Activities to ensure that students who experience difficulty mastering the proficient or advanced levels of academic achievement standards ... shall be provided with effective, timely additional assistance which shall include measures to ensure that students' difficulties are identified on a timely basis and to provide sufficient information on which to base effective assistance."

20 U.S.C. § 6314(b)(1)(I)

Legal Basis for Individualized Assistance under IDEA

- IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to be involved in and make progress in the general education curriculum.

20 U.S.C. § 1414(d)(1)(A)(i)(IV)

Consideration of Special Factors in the IEP

- ✓ For children with behavioral challenges, use of positive behavioral interventions and supports, and other strategies;
- ✓ For children with limited English proficiency, language needs of the child in relation to IEP;
- ✓ For children who are blind or visually impaired, instruction in Braille, if appropriate;
- ✓ For children who are deaf or hard of hearing, language and communication needs of the child
- ✓ For all children, whether assistive technology devices and services are needed.

20 U.S.C. § 1414(d)(3)(B)

Clarification on Accommodations

- Specially designed instruction is NOT the same as accommodations.
- If student's needs can be met with accommodations, there is NO need for special education.
- Accommodations are NOT the same as modifications.

The Right to Behavioral Interventions

Addressing Behavior as an Education Issue

- The right to receive effective behavioral interventions as part of FAPE.
- The right to receive effective behavioral interventions as part of the LRE.
- The right to receive effective behavioral interventions as part of AGC.

New Interventions Emphasized in IDEA 2004

- Positive Behavior Interventions and Supports (PBIS) – 20 U.S.C. § 1400(c)(5)(F).
- Response to Intervention (RTI) Models – see 20 U.S.C. § 1414(b)(6)(A).

5. Assessments

Are students given regular and ongoing assessments of what they know and can do?

- Are assessments aligned with state standards? Do assessments rely on multiple measures that advance higher-order thinking skills?
- Are assessments used for the purposes for which they are valid and reliable, consistent with nationally recognized professional, technical standards?

Assessments (cont'd)

- Are assessments designed to include ALL students? Do assessments allow for reasonable accommodations and adaptations? Are assessments written in a language and form that will allow limited English proficient students to demonstrate mastery?
- Are assessments being used to inform instruction?

NCLB Assessment Requirements – the Basics

- Assessments must be aligned with state academic content and achievement standards. 20 U.S.C. § 6311(b)(3)(C)(ii).
- Mandatory public reporting of data results must be disaggregated by key subgroups to show if state overall, district and school made Adequate Yearly Progress. 20 U.S.C. §§ 6311(b)(2)(C)(v); 6311(b)(3)(C)(xiii).

NCLB Requirements (cont'd)

- If school doesn't make AYP for any subgroup, school doesn't make AYP (note new regulation re/students w. significant cognitive disabilities; flexible policy re/LEP).
- Failure to make AYP triggers consequences, including student transfers, supplemental educational services, professional development, restructuring.

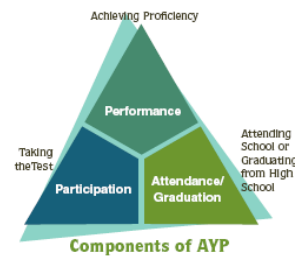
What is Adequate Yearly Progress?

- Measure of continued improvement.
- Based primarily on academic assessments showing enough annual progress to get all students in each school and each subgroup – racial/ethnic group, economic disadvantage, LEP, and SWD – to a proficient level in language arts and math by 2014.

AYP (cont'd)

- Each state determines if schools (districts and state overall) are making “AYP” based on its own definition of proficiency.
- When a school fails to make AYP, students are afforded the right to transfer to another school (choice) and receive supplemental educational services (SES). The school is designated for improvement, corrective action, or restructuring.

Adequate Yearly Progress 3 components



SUBGROUP REPORTING:

- Economically disadvantaged
- Students from major racial/ethnic groups
- Students with limited English proficiency
- Students with disabilities (IDEA-eligible only)*

6. High-Stakes Decisions

How are important decisions being made about students?

- Does the school have a clear and valid set of criteria for making decisions concerning such actions as program placement, promotion, and graduation?
- Are all students given an opportunity to learn the knowledge and skills necessary for meeting the criteria for important decisions?

7. Participants in School Decision-Making

What is the role of various stakeholders in school decision-making?

- Is decision-making shared among all members of the school community, including teachers, administrators, other staff, parents, and students (when appropriate)?

School Decision-Making (cont'd)

- Are all members of the school community given effective access to information, training, and assistance necessary to become active participants in school-level decision-making?
- Are parents and educators working together in effecting school-level change?

“Other” Accountability under Title I: Parent Involvement

Title I schools must:

- Work together with parents to create a plan for providing all students with a high-quality education.
- Partner with parents to close the achievement gap between all students.
- Provide parents with the *knowledge* and *skills* necessary to become equal partners in school reform.

Schoolwide Program Plan

School Plan must:

- Be *jointly* developed and agreed upon with parents.
- Include a comprehensive needs assessment.
- Describe how the entire school community will provide a high quality education for every child.

20 U.S.C. § 6314(b)

Parent Involvement Policy

- Each school district and school receiving funds under Title I must develop *jointly* with parents a written parent involvement policy that:
 - Describes *how* parents will be involved in *joint* planning, development, and review of district and school plans.
 - Addresses training and capacity building for parents and school personnel.
 - Is *jointly* developed and agreed upon.

20 U.S.C. § 6318(b)

School-Parent Compact

- *Jointly* developed document that outlines *how* parents and school staff will share responsibility for improved student achievement.
- Describes school's responsibility to provide high-quality curriculum and instruction in effective learning environment that enables students to meet state standards.
- Describes parents' responsibility for supporting their children's learning.
- Addresses importance of communication between parents and teachers.

20 U.S.C. § 6318(d)

Capacity Building

To promote partnership and build capacity for improving student achievement, each school must:

- Provide training and assistance to parents about standards, assessments, monitoring children's progress.
- Provide materials and training to help parents work with their children (e.g., literacy training and training in the use of technology).

20 U.S.C. § 6318(e)

Capacity Building (cont'd)

Each school must:

- Educate school staff about parental outreach, communication and working with parents as "equal partners."
- Ensure that information, materials, and learning opportunities are accessible to parents.

Evaluating the Title I Process

- Does the school plan *specifically* describe *how* every student will receive a high quality education?
- Does the parent involvement policy *specifically* describe *how* parents will *jointly* develop the school plan?
- Does the parent involvement policy *specifically* describe *how* parents will receive the information and training needed to be equal partners in this process?
- Were both documents *jointly* developed and *agreed* upon by parents?

Title I Parent Involvement Provisions as Tools for Providing a High-Quality Education

- Improve learning through building school-level capacity.
- Define what is required by Title I in terms of a high-quality education and what is necessary to enable students to meet state standards.

Title I Parent Involvement Provisions as Tools for Providing a High-Quality Education (cont'd)

- Require schools and school districts to work with parents to close the achievement gap between children of color and white children, rich and poor children, and students with and without disabilities.
- Build school-level capacity to develop broader learning communities with a common goal.