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Access to the General Curriculum for Students with Disabilities

A Brief Legal Interpretation

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Access to the General Curriculum for Students with Disabilities: A Brief Legal Interpretation

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Introduction

The 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA) introduced important changes in the provision of special education services for students with disabilities. One of the most significant changes concerns the requirement that students with disabilities receive *access to the general curriculum*. Specifically, the new Amendments require that students with disabilities: (1) *have access to* the general curriculum; (2) *be involved in* the general curriculum; and (3) *progress in* the general curriculum.

The purpose of this brief is to define and clarify the meanings of the terms access, involvement, and progress in relation to the general curriculum. These new requirements have the potential to lead to improved educational opportunities and outcomes for students with disabilities.

Students with Disabilities

In order to qualify as a “child with a disability” under IDEA ’97 and be deemed eligible to receive special education services, a child must satisfy two requirements: (1) the child has one of the disabilities specified in the law; and (2) the disability results in the need for special education and related services (20 U.S.C. § 1401(3), 34 C.F.R. § 300.7). IDEA ’97 specifies the disability categories that may entitle a student to receive special education and related services:

- Mental retardation
- Hearing impairments, including deafness
- Speech or language impairments
- Visual impairments, including blindness
- Emotional disturbance
- Orthopedic impairments
- Autism
- Traumatic brain injury
- Other health impairments
- Specific learning disabilities

In addition, a child aged three through nine who is “experiencing developmental delays,” as defined by the State, may be eligible for services under IDEA at the discretion of the State and local educational agency (20 U.S.C. § 1401(3)(B), 34 C.F.R. § 300.7(b)).

General Curriculum

The regulations implementing the 1997 Amendments describe the term *general curriculum* as the same curriculum as that established for students without disabilities (34 C.F.R. § 300.347(a)(1)(i)). The general curriculum can be thought of as “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). In recent years, the general curriculum has come to be influenced to a great extent by the adoption of national, state, and district standards (Nolet and McLaughlin, 2000).

“Access” to the General Curriculum

(1) Access Prior to the 1997 Amendments

In 1975, Congress passed the forerunner of IDEA, the Education for All Handicapped Children Act, according to which children with disabilities were given the right to receive a “free appropriate public education” (FAPE)¹ in the “least restrictive environment” (LRE).² At the time, Congress estimated that one million children with disabilities were being excluded from public schools (20 U.S.C. § 1400(c)(2)(C)). The purpose of the 1975 law was to provide students with disabilities the right to a public education, individually tailored to address disability-specific needs. This initial law focused on providing students with disabilities *access to special education services* as well as *physical access* to the school building.

In 1982 in the landmark decision *Board of Education v. Rowley*, the U.S. Supreme Court interpreted the phrase “free appropriate public education” to signify a “basic floor of opportunity,” not requiring “anything more than equal access” (458 U.S. 176, 200 (1982)). The Court held that the statute did not require any substantive level of educational benefit, concluding that “the intent of the Act was more to

¹ FAPE is defined as: “special education and related services that - (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under [the law]” (20 U.S.C. § 1401(8); *see also* 34 C.F.R. § 300.13).

² LRE refers to educating students with disabilities to the maximum extent appropriate in a setting together with students without disabilities (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.550(b)).

open the door to public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside” (*Id.* at 192). During these early years, the concepts of mainstreaming and inclusion also evolved but tended to focus on the placement of students with disabilities in the regular education classroom without attention to necessary supplementary aids and services, accommodations, modifications, and supports.

By the early 1990s, many improvements had been made in the education of children with disabilities (*see* Table 1). Increased numbers of students with disabilities were graduating from high school and obtaining post-school employment (U.S. Department of Education, 1995; Wagner, Blackorby, Cameto, Hebbeler, and Newman, 1993). In addition, the number of children living in isolated residential institutions had decreased dramatically. Children with the most significant disabilities were attending public schools and interacted on a social basis with their peers (U.S. Department of Education, 1995).

In spite of these positive changes, however, students with disabilities still faced many difficulties. For example, research showed that students with disabilities tended to fail classes and drop out of school at a higher rate than students without disabilities (U.S. Department of Education, 1995). In passing the 1997 Amendments to IDEA, Congress explained, “Despite the progress, the promise of the law has not been fulfilled” (H.R. Rep. No. 105-95, at 85 (1997)).

Table 1. Education of children with disabilities prior to 1975 and in 1993-94

| Prior to 1975 | 1993-94 |
|---|---|
| <ul style="list-style-type: none"> 1,000,000 children with disabilities were excluded from public schools | <ul style="list-style-type: none"> 12% of elementary and secondary students attending public schools received special education services (U.S. Department of Education, 1996) |
| <ul style="list-style-type: none"> Families often had to find education for their children in settings not part of the public schools, far from their homes and at their own expense | <ul style="list-style-type: none"> More than 95% of children with disabilities were educated in “regular school buildings” as opposed to separate facilities (U.S. Department of Education, 1996) |
| <ul style="list-style-type: none"> More than 50% of children with disabilities did not receive appropriate educational services | <ul style="list-style-type: none"> 43.4% of students with disabilities (aged 6-21) were educated in the general education classroom (U.S. Department of Education, 1996) |
| <ul style="list-style-type: none"> Many children who attended public schools had undetected disabilities that inhibited their educational progress | <ul style="list-style-type: none"> 16% of students with disabilities completed four years of college or more (U.S. Department of Education, 1996, Table 3.1, citing Louis Harris and Associates, 1994) |

Note. All of the information in column 1 is from 20 U.S.C. § 1400(c)(2).

(2) The Meaning of Access Following the 1997 IDEA Amendments

The concept of access in the 1997 IDEA Amendments far exceeds the earlier definition of access and goes beyond the concepts of mainstreaming and inclusion. The regulations implementing the 1997 Amendments use the term access to the general curriculum in defining special education, stating that special education is “specially designed instruction” (20 U.S.C. § 1401(25); 34 C.F.R. § 300.26(a)(1)) whose purpose is

To address the unique needs of the child that result from the child’s disability; and to ***ensure access of the child to the general curriculum***, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children (34 C.F.R. § 300.26(b)(3)(emphasis added)).

Ensuring access to the general curriculum means providing students with disabilities the right to the same State, district, and school curriculum as that provided to students without disabilities. Thus, the inclusion of access in the 1997 Amendments has greatly raised expectations for the performance of students with disabilities. Access to the general curriculum by itself, however, does not include standards or benchmarks; it represents a first step. Involvement in and progress in the general curriculum can be viewed as providing the specific details about how the concept of access is to be achieved.

“Involvement in” the General Curriculum

The 1997 Amendments state that students with disabilities must ***be involved in*** the general curriculum, and the law includes several requirements that help explain this involvement: (1) IEP goals must address how the student will be involved in and progress in the general curriculum; (2) the IEP must specify appropriate supplementary aids and services, accommodations, modifications, or supports; and (3) the IEP must include an explanation if the student will not participate in the regular class.

(1) IEP Goals Must Address How the Student Will Be Involved in and Progress in the General Curriculum

The IEP must state the child’s present levels of educational performance, including how the child’s disability impacts his or her involvement in and progress in the general curriculum (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.347(a)(1)).

The IEP must also contain “measurable annual goals, including benchmarks or short-term objectives... to enable the child to ***be involved in and progress in the general curriculum***” (20 U.S.C.

§ 1414(d)(1)(A)(ii); 34 C.F.R. § 300.347 (a)(2)(emphasis added)). Since the general curriculum is defined as the same as that established for students without disabilities, IEP goals should be aligned, as appropriate to the needs of the child, with State and district curriculum standards. While in the past, IEP goals have been based on the specific needs of the individual student, the goals did not necessarily relate to the general curriculum (*see* Shriner and Destefano, 2003; Thompson, Thurlow, Quenemoen, Esler, and Whetstone, 2001). Thus, again, the 1997 Amendments have raised expectations for the performance of students with disabilities.

Further emphasizing the importance of aligning IEP goals with the general curriculum, IDEA '97 presents new requirements concerning IEP team participants. Prior to 1997, IDEA specified that the child's teacher had to be a member of the IEP team (34 C.F.R. § 300.344(a)(2)(1990)). IDEA '97 requires that the IEP team include "at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)" and "at least one special education teacher of the child, or if appropriate, at least one special education provider of the child" (20 U.S.C. § 1414(d)(1)(B)(ii)-(iii)(1997); 34 C.F.R. § 300.344(a)(2)-(3)(1999)). In addition, whereas previously a representative from the district was required to participate on the IEP team, IDEA '97 specifies that this representative must be knowledgeable about the general curriculum and about the availability of resources of the local educational agency (20 U.S.C. § 1414(d)(1)(B)(iv)(1997); 34 C.F.R. § 300.344(a)(4)(1999)).

(2) The IEP Must Specify Appropriate Supplementary Aids and Services, Accommodations, Modifications, or Supports

A second provision describing the involvement of students with disabilities in the general curriculum is the requirement that the child's IEP contain "a statement of the special education and related services and supplementary aids and services 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 enable the child to be involved in and progress in the general curriculum (20 U.S.C. § 1414(d)(1)(A)(iii); 34 C.F.R. § 300.347(a)(3)).

Supplementary aids and services are defined as aids, services and other supports that enable the student to be educated together with children without disabilities to the maximum extent appropriate (20 U.S.C. § 1401(29); 34 C.F.R. § 300.28). In the field of special education, there is an important distinction between the terms accommodation and modification. Generally, an *accommodation* is a curricular, environmental, or testing adaptation that does not fundamentally alter the general curriculum, lower standards, or change the construct being measured on a test. The purpose of an accommodation is to level the playing field. By contrast, generally, a *modification* is a "substantial" adaptation that results in a fundamental alteration (Freedman, 2000). The IEP must also specify *supports* for school personnel.

IDEA '97 further requires that specific information regarding the use of the supplementary aids and services, accommodations, modifications, or supports be included in the IEP. For example, the IEP must specify the anticipated date for the initiation, frequency, setting, and duration of such services and modifications (20 U.S.C. § 1414(d)(1)(A)(vi); 34 C.F.R. § 300.347(a)(6)). If the student requires only modifications or accommodations in order to progress in a specific area of the general curriculum, the IEP does not need to include a goal in this area. The IEP, however, does need to specify these modifications or accommodations (34 C.F.R. App. A to pt. 300). The new emphasis on the use of supplementary aids and services, accommodations, modifications, and supports means that mere physical access to the regular classroom without any help or support is no longer sufficient under the law.

Decisions as to which supplementary aids and services, accommodations, modifications, or supports are appropriate for a particular student are to be made on an individualized basis by the IEP team. It is important that these decisions do not substantially lower curriculum standards and thereby, in effect, deny access to the general curriculum. The approach should be to create at the outset curricular goals, methods, materials, and measures of assessment with built-in supports for diverse learners, rather than to retrofit supplementary aids and services, accommodations, modifications, or supports after the fact (Hitchcock *et al.*, 2002). This kind of approach, called Universal Design for Learning (UDL), reflects an understanding that each learner is unique and acknowledges the need to create learning experiences that help each individual maximize his or her potential to be involved in the general curriculum (Center for Applied Special Technology (CAST), 2002).

(3) The IEP Must Include an Explanation if the Student Will Not Participate in the Regular Class

A third provision that relates to the involvement of students with disabilities in the general curriculum concerns placement in the regular class. The 1997 Amendments require that a student's IEP include an explanation if the child will *not* participate with children without disabilities in the regular class (20 U.S.C. § 1414(d)(iv); 34 C.F.R. § 300.347(a)(4)). The law further explicitly states that a child cannot be removed from education in age-appropriate regular classrooms solely because of the need for modifications to be made in the general curriculum (34 C.F.R. § 300.552(e)).

These new provisions do not convey an automatic requirement to place students with disabilities in the regular classroom; however, the statute expresses a strong preference in favor of such placement. Moreover, the IEP goals of students who are not in a regular classroom must also address the general curriculum. Decisions regarding the appropriate educational placement of a child with a disability are to

be made on an individualized basis “by a group of persons, including the parents, and others knowledgeable about the child, the meaning of the evaluation data, and the placement options” (34 C.F.R. § 300.552(a)(1)).

“Progress in” the General Curriculum

The 1997 Amendments require that the student’s IEP address how the student will *progress in* the general curriculum. The intent of the legislation is to focus on student outcomes and results and to help students with disabilities meet the State and district standards that apply to all children. Progress in the general curriculum can be viewed as having three determining components: (1) the IEP must indicate the manner in which progress toward IEP goals will be measured; (2) students with disabilities must participate in State and district-wide assessments, with appropriate accommodations, where necessary; and (3) State education agencies must develop performance goals and indicators, and provide reports on progress toward the attainment of these goals and indicators.

(1) The IEP Must Indicate the Manner in which Progress toward IEP Goals Will Be Measured

The 1997 Amendments enumerate specific provisions the IEP must contain to ensure that progress toward IEP goals is measured:

- **Measurable annual goals**, including benchmarks or short-term objectives (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.347 (a)(2));
- The **manner** in which the student’s progress toward the annual IEP goals will be measured (20 U.S.C. § 1414(d)(1)(A)(viii)(I); 34 C.F.R. § 300.347(a)(7)(i)); and
- The **manner in which parents will be regularly informed of their child’s progress** toward the annual IEP goals (20 U.S.C. § 1414(d)(1)(A)(viii)(II); 34 C.F.R. § 300.347(a)(7)(ii)).

In addition, IDEA '97 requires that schools make a good faith effort to help the student reach the goals, objectives, and benchmarks in his or her IEP (34 C.F.R. § 300.350(a)(2)).³ IEPs must be reviewed annually and revised, as appropriate, to address lack of progress toward IEP goals and lack of progress in the general curriculum (20 U.S.C. § 1414(d)(4); 34 C.F.R. § 300.343(c)). Moreover, as part of the process

³ The law further explains, “Nothing in this section limits a parent’s right to ask for revisions of the child’s IEP or to invoke due process procedures if the parent feels that the [good faith] efforts required...are not being made” (34 C.F.R. § 300.350(c)).

of reevaluation,⁴ which is to occur at least every three years, a child's progress must be reviewed to determine whether changes in the educational program are necessary to help the student attain IEP goals and participate in the general curriculum (20 U.S.C. § 1414(c)(1)(B)(iv); 34 C.F.R. § 300.533(a)(2)(iv)).

(2) Students with Disabilities Must Participate in State and District-Wide Assessments, with Appropriate Accommodations, where Necessary

In conjunction with the measurement of progress toward IEP goals, the 1997 IDEA Amendments further mandate the inclusion of students with disabilities in State and district-wide assessments, with appropriate accommodations or modifications in administration (20 U.S.C. § 1412(a)(17)(A); 34 C.F.R. § 300.138(a)). The student's IEP must contain a statement explaining:

- The necessary *accommodations or modifications* in administration to enable the student to take part in State and district-wide assessments; and
- If the student will not participate, why such assessments are not appropriate and how the student will be assessed (20 U.S.C. § 1414(d)(1)(A)(v); 34 C.F.R. § 300.347(a)(5)).

An accommodation in testing is an adaptation that does not fundamentally alter the construct being measured. In contrast, a testing modification is a substantial adaptation that results in a fundamental alteration (Freedman, 2000). The accommodations or modifications that a student receives in testing should match those that he or she receives in the classroom. When students are unable to take part in the general assessment with accommodations or modifications, they are to receive an *alternate assessment*, which is a completely different measure of a child's learning progress – for example, a portfolio of the child's work may be evaluated. The purpose of an alternate assessment is the same as that of the general assessment – to measure the student's progress.

(3) State Education Agencies Must Develop Performance Goals and Indicators, and Provide Reports on Progress toward the Attainment of These Goals and Indicators

The 1997 Amendments also require State education agencies to develop:

- Overall *performance goals* for students with disabilities that are consistent to the maximum extent appropriate with those for all children (20 U.S.C. § 1412(a)(16)(A); 34 C.F.R. § 300.137(a)); and

⁴ IDEA also requires that initial evaluations include a variety of assessment measures that will provide information about how to enhance the child's involvement in and progress in the general curriculum (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.532(b)).

- **Performance indicators** to measure the progress of students with disabilities toward the achievement of these goals that, at a minimum address dropout rates, graduation rates, and performance on assessments (20 U.S.C. § 1412(a)(16)(B); 34 C.F.R. § 300.137(b)).

States are also required to **provide reports** every two years that are made available to the public and that include data regarding the performance of students with disabilities in the State toward meeting established performance goals and indicators. The reports must include data on the performance of students with disabilities on assessments together with all other children, as well as data regarding the performance of students with disabilities alone (20 U.S.C. §§ 1412(a)(16)-(17)(B); 34 C.F.R. §§ 300.137-300.139).

In addition, States will need to consider the requirements of the No Child Left Behind Act of 2001 (NCLB), which focuses on accountability for the performance of all students (20 U.S.C. § 6301 *et seq.*). NCLB also requires that State assessments provide for the participation of all students, including students with disabilities, and provide for appropriate accommodations for students with disabilities (20 U.S.C. § 6311(b)(3)(C)(ix)(I)-(II); 34 CFR § 200.6(a)).

Conclusion

The 1997 Amendments concerning access to the general curriculum have raised expectations for the performance of students with disabilities by focusing on student outcomes and results. Ensuring access to the general curriculum means providing students the right to the same curriculum as that provided to all students.

Access to the general curriculum far exceeds the earlier notion of access to special education services and physical access to the school building, and goes beyond the concepts of mainstreaming and inclusion. At the same time, access by itself does not denote any standards or benchmarks; it represents a first step. Involvement in and progress in the general curriculum help explain how access is to be achieved, and in many instances the IEP is the conduit for ensuring access.

Involvement in the general curriculum requires the following:

- IEP goals must address how the child will be involved in and progress in the general curriculum;
- The IEP must specify the appropriate supplementary aids and services, accommodations, modifications, or supports; and
- The IEP must include an explanation if the student will not participate in the regular classroom.

Progress in the general curriculum requires the following:

- The IEP must indicate the manner in which progress toward IEP goals will be measured;
- Students with disabilities must participate in State and district-wide assessments, with appropriate accommodations, where necessary; and
- State education agencies must develop performance goals and indicators, and provide reports on progress toward the attainment of these goals and indicators.

The new requirements in IDEA '97 regarding access to, involvement in, and progress in the general curriculum have the potential to lead to improved educational opportunities and outcomes for students with disabilities. ❖

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