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Access to the General Education Curriculum for Students with Disabilities: A Discussion of the Interrelationship between IDEA and NCLB

A Policy Paper for Educators and Families
Updated for IDEA 2004

Prepared by Joanne Karger, Esq. for NCAC

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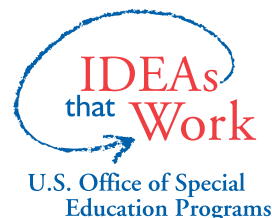


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Access to the General Education Curriculum for Students with Disabilities: A Discussion of the Interrelationship between IDEA and NCLB

By Joanne Karger, Esq.

I. Introduction

In 1975, Congress passed the Education for All Handicapped Children Act (EAHCA), according to which children with disabilities were given the right to a “free appropriate public education” (FAPE)¹ in the “least restrictive environment” (LRE).² Prior to this time, the educational needs of one million children with disabilities were not being fully met (20 U.S.C. § 1400(c)(2)). A primary purpose of the 1975 law was to ensure that all students with disabilities had access to special education and related services designed to meet their unique needs. The 1975 statute was reauthorized several times; in 1990, it was renamed the Individuals with Disabilities Education Act (IDEA).

By the early 1990s, many improvements had been made in the education of children with disabilities. Early intervention and early childhood special education services were introduced in 1986, and requirements for transition planning were initiated in 1990. Moreover, the number of children with significant disabilities living in residential institutions had decreased dramatically (U.S. Department of Education, 1995). In addition, more 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 spite of these positive changes, however, students with disabilities still faced many obstacles. For example, research showed that students with disabilities tended to fail classes and drop out of school at higher rates than students without disabilities (U.S. Department of Education, 1995). In addition, efforts to include students with disabilities in the regular education classroom—commonly referred to as “mainstreaming” and later “inclusion”—often focused on special education as a place, without sufficient attention to necessary supports and services (Hocutt, 1996). Congress summed up the situation as follows: “Despite the progress, the promise of the law has not been fulfilled” (H.R. Rep. No. 105-95 (1997)).

The 1997 reauthorization of IDEA (IDEA '97) attempted to address many of these problems, introducing important changes in the provision of educational services for students with disabilities. One of the most significant changes was the new requirement that students with disabilities have access to the general curriculum – i.e., the same curriculum as that provided to students without disabilities (34 C.F.R. § 300.347(a)(1)(i)). Expanding upon the earlier concepts of FAPE and LRE, the goal was to raise expectations for the educational performance of students with disabilities and to improve their educational results (U.S. Department of Education, 1995).

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(9)).

² LRE refers to the education of students with disabilities to the maximum extent appropriate in a setting together with students without disabilities (20 U.S.C. § 1412(a)(5)(A)).

Four years later, Congress passed the No Child Left Behind Act of 2001 (NCLB), the purpose of which was to promote equal opportunity for all children to receive a high-quality education and attain proficiency, at a minimum, on challenging State achievement standards and State assessments (20 U.S.C. § 6301). NCLB includes several requirements that have implications for the participation of students with disabilities in the general curriculum.

On December 3, 2004, President Bush signed into law the Individuals with Disabilities Education Improvement Act of 2004 (IDEA '04) (Pub. L. No. 108-446, 118 Stat. 2647 (2004) (amending 20 U.S.C. §§ 1400 *et seq.*). IDEA '04 maintains the emphasis of IDEA '97 on the promotion of access to the general curriculum, while at the same time introducing a number of changes, including various points of alignment with NCLB. IDEA '04 also alters some of the language used in IDEA '97. For example, throughout IDEA '04, Congress replaced the words “general curriculum” used in IDEA '97 with the phrase “general education curriculum,” emphasizing the educational component of the general curriculum. This paper uses the latter phrase found in IDEA '04, unless directly quoting IDEA '97 or NCLB.

This paper analyzes the concept of access to the general education curriculum as mandated by IDEA and further impacted by NCLB. Through a discussion of the interrelationship between IDEA and NCLB, this paper addresses the following questions: (1) What are the legal provisions in IDEA and NCLB associated with access to the general education curriculum for students with disabilities; (2) how do these provisions intersect with one another; and (3) how do these provisions translate into educational obligations for States and school districts? By clarifying the interrelationship between IDEA and NCLB and highlighting the legal and educational obligations incumbent upon States and local school districts, this paper will lead to a more comprehensive understanding of the meaning of access to the general education curriculum.

II. Individuals with Disabilities Education Act

Access to the General Education Curriculum

Congress first introduced the concept of access to the general curriculum in IDEA '97 by stating, “Over 20 years of research and experience has demonstrated that the education of students with disabilities can be made more effective by having high expectations for such children and *ensuring their access in the general curriculum* to the maximum extent possible” (20 U.S.C. § 1400(c)(5)(A) (1997) (emphasis added)). Similarly, the implementing regulations of the U.S. Department of Education (DOE) for IDEA '97³ defined special education as “specially designed instruction” whose purpose is

[t]o 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)).

³ The DOE is currently in the process of preparing its implementing regulations for IDEA '04, having completed its period for comments and recommendations on February 28, 2005 (69 F.R. 77968, 77969).

The nonspecific term “general curriculum” was not defined anywhere in IDEA ‘97 or its implementing regulations but was later described in the regulations as “the same curriculum as for nondisabled children” (*Id.* § 300.347(a)(1)(i)). The statute and regulations essentially left the details of the general curriculum to be filled in by States and local school districts.

IDEA ‘04 both preserves and extends the above language of IDEA ‘97 regarding research and access to the general curriculum, stating, “Almost 30 years of research and experience has demonstrated that the education of students 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) (2004) (emphasis added)). As noted in the introduction, IDEA ‘04 replaced the words, “general curriculum” with “general education curriculum.” Moreover, by adding the words “in the regular classroom,” IDEA ‘04 calls attention to the important relationship between access to the general education curriculum and placement in the regular classroom, highlighting the strong preference of IDEA for education in the LRE.⁴

Beyond these general introductory statements concerning access to the general education curriculum, in other places in the respective reauthorizations, both IDEA ‘97 and IDEA ‘04 specifically require that students with disabilities be involved in and progress in the general education curriculum. Thus, the overall right to have access to the general education curriculum can, in fact, be viewed as consisting of three interrelated stages: access, involvement and progress (Hitchcock et al., 2002). The first stage, “access,” refers to the accessibility of the curriculum to the student. “Involvement,” the second stage, can be thought of as the on-going process of meaningful participation by the student in the general education curriculum and, as such, is an interim phase that links access to progress. “Progress” in the general education curriculum, the third stage, refers not only to a final outcome, but also to an evaluative measure that can feed back into the earlier stages of access and involvement. The three stages of access, involvement and progress can therefore be thought of as forming an ongoing cycle (see Figure 1). These stages are not entirely discrete because in certain instances, a provision can arguably fall under more than one rubric. This framework, however, which is utilized throughout this paper, is useful in elucidating the various components of access to the general education curriculum and in analyzing the educational issues involved.

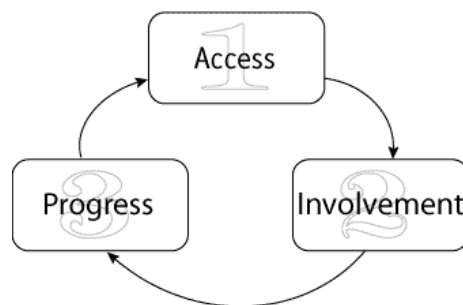


Figure 1. Cycle of Ensuring Access to the General Education Curriculum

⁴ For a discussion of this congressional preference, see, e.g., *Oberti v. Board of Educ.*, 995 F.2d 1204, 1214 (3d Cir. 1993); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5th Cir. 1989); *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 1983).

The concept of access to the general education curriculum specified in IDEA '97 and IDEA '04 and described above represents a significant advance in the education of students with disabilities, far exceeding the earlier notion of physical access to the school building and access to special education and related services intended by the EAHCA in 1975. Moreover, by incorporating both involvement and progress, the requirement that students have access to the general education curriculum extends well beyond the concepts of mainstreaming and inclusion that developed following 1975 and focused mainly on placement in the regular classroom.

IDEA '04 includes a new provision not found in IDEA '97 that has the potential to bring about improved accessibility of the general education curriculum for students with disabilities—the establishment of a National Instructional Materials Access Center, which will maintain a catalog of print instructional materials prepared in accordance with the National Instructional Materials Accessibility Standard (NIMAS) (20 U.S.C. § 1474(e)(2)). The NIMAS standard, which is “to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats” (*Id.* at § 20 U.S.C. § 1474(e)(3)(B)), will help students with print and other disabilities have greater access in a more timely fashion to the print materials that are part of the general education curriculum. IDEA '04 also establishes a process for the preparation, delivery and purchase of digitized instructional materials for States and school districts who choose to utilize the voluntary NIMAS standard (*Id.* §§ 1412(a)(23); 1413(a)(6)).

Involvement in the General Education Curriculum

Both IDEA '97 and IDEA '04 contain three requirements pertaining to a student's individualized education program (IEP) that specifically mention involvement in the general education curriculum—the requirements concerning present levels of performance, annual goals, and supplementary aids and services, program modifications and supports for personnel. IDEA '04 maintains the major focus of the provisions found in IDEA '97 while at the same time introducing a number of changes. The provisions appearing in IDEA '04 are as follows:

- The IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress⁵ in the general education curriculum.
- The IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.
- The 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)(I), (II), (IV))

The above provisions pertain to the IEP, which can be viewed as the central mechanism, both legally and educationally, for ensuring access to the general education curriculum. These three requirements translate into important educational obligations for school districts by laying out

⁵ Although the language used by IDEA in these requirements refers to both involvement and progress, the requirements are included here under the rubric of involvement.

specific steps that must be taken by the IEP team in order to enable the student to be involved in the general education curriculum in a meaningful way.

The first provision relates to the child's present levels of performance. Before IDEA '97, the IEP team had to state the student's current levels of educational performance. IDEA '97 and IDEA '04, however, add the requirement that the statement describe the specific effect of the student's disability on his/her involvement and progress in the general education curriculum. Such specification is an important first step in the design of an appropriate educational program for the student. IDEA '04 goes beyond IDEA '97 in requiring not only the levels of the student's educational performance but also the level of his/her "functional performance," acknowledging "that for some children, functional performance is also a critical element that should be measured" (Sen. Rep. No. 108-185 (2004)).

The second provision requires the IEP to include annual goals that will enable the child to be involved in and progress in the general education curriculum, as appropriate to the needs of the child. IEP goals lay the foundation for a student's educational program and provide a roadmap for the teacher. Before IDEA '97, IEP goals had to be based on the specific needs of the individual student; however, the goals did not necessarily relate to the general education curriculum (U.S. Department of Education, 1995). As with the first provision, IDEA '04 extends the requirement to include "functional goals" in addition to academic goals, again with the intent of recognizing the importance of functional performance for some students with disabilities (Sen. Rep. No. 108-185 (2004)).

IDEA '04 also introduces another change by eliminating the requirement in IDEA '97 for the inclusion of short-term objectives or benchmarks. The report of the Senate Health, Education, Labor and Pensions (HELP) Committee notes that short-term objectives and benchmarks have contributed to the large paperwork burden associated with IEPs and that elimination of this requirement should facilitate a greater focus on the goals themselves (Sen. Rep. No. 108-185 (2004)). The elimination of short term objectives and benchmarks, however, does not apply to students who are taking part in alternate assessments aligned with alternate achievement standards (20 U.S.C. § 1414(d)(1)(A)(i)(I)(cc)) (See discussion of "Alternate Achievement Standards" under NCLB below).

The third provision specifies that the IEP team must consider the supplementary aids and services, program modifications and supports provided for school personnel that will enable the student to be involved in and progress in the general education curriculum. This provision, underscoring the fact that mere physical access to the regular classroom without appropriate support is no longer sufficient under the law, has the potential to lead teachers to consider ways to adapt their instructional practices to enable the student to participate in the general education curriculum. The legislative history leading up to the IDEA '97 explained:

The new emphasis on participation in the general education curriculum . . . is intended to produce attention to the accommodations and adjustments necessary for disabled children to access the general education curriculum and the special services which may be necessary for appropriate participation in particular areas of the curriculum (Sen. Rep. No. 105-17 (1997)).

IDEA '04 also extends the language of IDEA '97 by specifying that determination of the necessary supplementary aids and services, program modifications and supports for school personnel should be based on peer-reviewed research, thereby enhancing the quality of supports provided.

Beyond the three requirements pertaining to the IEP cited above that explicitly mention involvement in the general education curriculum, there are two additional requirements in both IDEA '97 and IDEA '04 that, while not specifically mentioning involvement in the general education curriculum, nevertheless have implications for the student's involvement by referring to the "regular class" and the "regular education environment." The provisions in IDEA '04 are as follows:

- The IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class (20 U.S.C. § 1414(d)(1)(A)(i)(V)).
- The IEP team must include not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment); [and] not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child (*Id.* §§ 1414(d)(1)(B)(ii)-(iii)).⁶

These two requirements also translate into important educational obligations for school districts. According to the first provision, school districts are obligated to provide greater justification for *not* including students with disabilities in the regular class. This provision expands upon IDEA's mandate that students with disabilities be educated in the least restrictive environment to the maximum extent appropriate. The DOE's implementing regulations for IDEA '97 further elaborate that a child cannot be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum (34 C.F.R. § 300.552(e)). Although these requirements in the statute and regulations do not convey an automatic obligation to place students with disabilities in the regular class, they reinforce IDEA's long-standing preference in favor of such placement.

The second provision concerns the composition of the IEP team. Prior to 1997, IDEA merely specified that the "child's teacher" had to participate as a member of the IEP team (34 C.F.R. § 300.344(a)(2)(1990)), but did not refer directly to the child's regular education teacher.⁷ Both IDEA '97 and IDEA '04 include the requirement that the child's regular education teacher be a member of the IEP team. The inclusion of the regular education teacher on the IEP team should help regular education teachers to begin to view students with disabilities as part of their responsibility and to think about ways of involving them in the general education curriculum. In addition, this provision has the potential to lead special education and regular education teachers to work together. Because the regular education teacher is the individual who is most familiar with the general education curriculum and who oversees instruction in the regular class, the input

⁶ IDEA '04 further specifies that attendance of a member is not required when the member's area of curriculum or related services is not being modified or discussed, if the parent and Local Educational Agency (LEA) consent. If the meeting involves modification to or discussion of the member's area of the curriculum or related services, the member can be excused from attending the meeting if the parent and LEA consent and the member submits his/her input in writing prior to the meeting (20 U.S.C. § 1414(d)(1)(C)).

⁷ In addition, IDEA '97 and IDEA '04 specify that the IEP team must include a representative of the LEA who is knowledgeable about the general education curriculum and about the availability of resources of the LEA (20 U.S.C. § 1414(d)(1)(B)(iv)(II)-(III)).

of this teacher, in conjunction with his/her collaboration with special education personnel, can help to ensure that the student participates in the general education curriculum in a meaningful way.

Finally, IDEA '04 also includes another requirement that has implications for the student's involvement in the general education curriculum—namely, that special education teachers be highly qualified (20 U.S.C. §1412(a)(14)(C)). This requirement aligns IDEA with the “highly qualified” requirements in NCLB (see “Teacher Qualifications” under NCLB below). Specifically, IDEA '04 requires that in order for a special education teacher to be highly qualified he/she must (1) have obtained full State certification as a special education teacher or have passed a State special education teacher licensing examination and hold a license to teach as a special education teacher in the State; (2) have not had special education teacher certification or licensure waived; and (3) hold at least a bachelor's degree (*Id.* § 1401(10)(B)). Moreover, special education teachers must demonstrate subject matter competence in accordance with the requirements for new and veteran elementary, middle and high school teachers under NCLB (*Id.* § 1412(a)(14)(C)-(D)). IDEA '04 further specifies that nothing in the law can be construed as creating a private right of action for parents to bring a claim for failure of a staff person to be highly qualified (*Id.* § 1412(a)(14)(E)).

Progress in the General Education Curriculum

As described earlier, access to the general education curriculum consists of three interrelated phases forming a cycle, the third of which is progress. Three aspects of progress in the general education curriculum⁸ can be delineated: (1) progress toward IEP goals, (2) participation in State and districtwide assessments and (3) establishment of State level performance goals and indicators.

The following provisions in IDEA '04 pertain to the first aspect of progress in the general education curriculum, progress toward IEP goals:

- The IEP must include a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided (20 U.S.C. § 1414(d)(1)(A)(i)(III)).
- The IEP must be reviewed periodically, but not less frequently than annually, and revised as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate (*Id.* §§ 1414(d)(4)(A)(i), (ii)(I)).

As with the majority of the requirements pertaining to involvement in the general education curriculum, these two requirements also focus on the IEP, and each translates into specific educational obligations for school districts. The first does not explicitly mention the general education curriculum; however, because IEP goals must address the child's involvement and progress in the general education curriculum (as appropriate to the needs of the child), the measurement of progress toward the attainment of these goals and the reporting of this progress to parents will also be connected to the general education curriculum. The Senate HELP

⁸ In addition, the implementing regulations for IDEA '97 require that when a student with a disability is placed in an “interim alternative educational setting,” the setting must be selected so as to enable the child to continue to progress in the general curriculum (34 C.F.R. § 300.522(b)(1)).

Committee stated that although IDEA '04 eliminated the requirement for short-term objectives and benchmarks, the reauthorization also heightened the reporting requirements regarding progress toward IEP goals.⁹ According to this committee, “These progress updates must provide parents with specific, meaningful, and understandable information on the progress children are making” (Sen. Rep. 108-185 (2004)).

The following provisions in IDEA '04 pertain to the second aspect of progress in the general education curriculum, the participation of students with disabilities in State and districtwide assessments:

- All children with disabilities must be included in all general State and districtwide assessment programs, including assessments described under NCLB, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs (20 U.S.C. § 1412(a)(16)(A)).
- The IEP must include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments; if the IEP team determines that the child will take an alternate assessment, the IEP must state why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate (*Id.* § 1414(d)(1)(A)(i)(VI)).
- States and districts must report, and make available to the public, information concerning the number of children with disabilities participating in regular assessments, in regular assessments with accommodations, and in alternate assessments, as well as the performance of children with disabilities on regular assessments and alternate assessments compared with the achievement of all children, including children with disabilities, on those assessments¹⁰ (*Id.* § 1412(a)(16)(D)).

The requirements pertaining to the participation of students with disabilities in State and districtwide assessments were introduced in IDEA '97 in order to increase accountability for the performance of students with disabilities and thereby improve their educational results. As part of the IDEA reauthorization process completed in 1997, the Department of Education (1995) stated,

When schools are required to assess students with disabilities and report on the results, schools are more likely to focus on improving results for students with disabilities, and students are more likely to have *meaningful access to the general curriculum* (p. 12) (emphasis added)).

IDEA '04 not only maintains the emphasis of IDEA '97 on assessments and accountability, but also aligns IDEA with NCLB by stating that the IDEA mandate for the inclusion of students with disabilities in State and districtwide assessments includes assessments described under NCLB. In addition, while IDEA '97 included the phrase “individual modifications in the administration of State or districtwide assessments” (20 U.S.C. § 1414(d)(1)(A)(v)(1997)), IDEA '04 changed the corresponding wording to read, “individual appropriate accommodations” (20 U.S.C. §

⁹ As with the elimination of short-term objectives and benchmarks, in an effort to help reduce the paperwork associated with IEPs, IDEA '04 authorizes the Secretary to approve no more than 15 proposals from States to develop a comprehensive multi-year IEP, not to exceed 3 years, designed to coincide with the natural transition points for the child (20 U.S.C. § 1414(d)(5)(A)).

¹⁰ States are only required to report on the performance of students with disabilities “if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student” (20 U.S.C. § 1412(a)(16)(D)(iv)).

1414(d)(1)(A)(i)(VI)(2004)). In the field of special education, an accommodation is generally thought of as an alteration that does not change the content of the curriculum or lower standards. In contrast, a modification is generally considered a change that creates a substantial alteration in the content of the curriculum or lowers standards (for example, teaching less content or different content) (Nolet & McLaughlin, 2000).

The participation of students with disabilities in State and districtwide assessments raises complex educational and psychometric issues with which States and districts must grapple in administering appropriate testing accommodations and alternate assessments. Testing accommodations that are appropriate can be thought of as a “corrective lens” through which “to correct for distortions in a student’s true competence caused by a disability unrelated to the construct being measured” (National Research Council (NRC), 1997, pp. 173, 176). There is the risk, however, that the accommodations may over- or under-compensate for such distortions and thereby interfere with the validity of the inferences being drawn from the assessment scores. Although decisions about the use of appropriate accommodations with respect to physical disabilities may be somewhat straightforward, according to the National Research Council (1997), “Most students with disabilities have cognitive impairments that presumably are related to at least some of the constructs tested” (p. 170). Unfortunately, there is little research examining the effects of specific accommodations on the validity of inferences made from the assessment scores of students with different types of disabilities (NRC, 1997, 1999; Sireci, Li, and Scarpati, 2003). IDEA ’04 further indicates that States and local school districts should, to the extent feasible, use “universal design principles” in the development and administration of State and districtwide assessments (20 U.S.C. § 1412(a)(16)(E)). According to the National Center on Educational Outcomes, “Universally designed assessments’ are designed and developed from the beginning to allow participation of the widest possible range of students, and to result in valid inferences about performance for all students who participate in the assessment” (Thompson, Johnstone, and Thurlow, 2002).

An alternate assessment is a different measure of the educational progress of students who cannot take part in the regular assessment, even with the help of accommodations. An alternate assessment, for example, may be a portfolio of the student’s work. As with the use of accommodations, educational and psychometric issues arise with respect to the use of alternate assessments (see, e.g., Quenemoen, Rigney, and Thurlow, 2002). IDEA ’04 includes a new provision specifying that alternate assessments must be aligned with the State’s content and achievement standards; if the State has adopted alternate academic achievement standards as permitted under the implementing regulations for NCLB, the alternate assessments must measure the achievement of children with disabilities against those standards (20 U.S.C. § 1412(a)(16)(C)(ii)) (see “Alternate Achievement Standards” under NCLB below).

Finally, the following provisions in IDEA ’04 pertain to the third aspect of progress in the general education curriculum, the establishment of performance goals and indicators by States. Specifically, States must,

- Establish performance goals for children with disabilities that are the same as the State’s definition of adequate yearly progress, including the State’s objectives for progress by children with disabilities, as specified under NCLB, address graduation rates and dropout rates, as well as

other factors that are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

- Establish performance indicators to assess progress toward achieving the performance goals, including measurable annual objectives for progress by children with disabilities under NCLB
- Provide annual reports on the progress of the State, and of children with disabilities in the State, toward meeting the performance goals.

(20 U.S.C. §§1412(a)(15)(A)-(C))

These three requirements pertain to obligations on the part of States. As noted with respect to the participation in assessment provisions, these requirements concerning performance goals and indicators are intended to increase accountability for the educational performance of students with disabilities. The first provision, requiring performance goals for students with disabilities to be consistent to the maximum extent appropriate with goals and standards for all children, also underscores the intent of both IDEA '97 and IDEA '04 to raise the level of expectations for the educational performance of students with disabilities. Moreover, it can be seen that IDEA '04 connects the first two provisions to NCLB (See “Accountability” under NCLB below). According to the Senate HELP Committee, “Since NCLB already established a system to measure the educational results for all children, including children with disabilities... any goals for the performance of children with disabilities should be the same as the State definition of adequately yearly progress, which include the State's objectives for progress by children with disabilities as provided for under NCLB” (Sen. Rep. 108-185 (2004)). IDEA '04 also changed the requirement for reporting on progress toward performance goals from every two years (in IDEA '97) to every year.

In summary, IDEA '97 and IDEA '04 lay out specific obligations incumbent on States and districts to ensure that students with disabilities have access to, are involved in and make progress in the general education curriculum. For many of these obligations, the IEP serves as the central mechanism, both legally and educationally, for ensuring access to the general education curriculum. The next section will discuss the impact of certain provisions in the No Child Left Behind Act of 2001 on the provision of access to the general education curriculum for students with disabilities.

III. No Child Left Behind Act

Four years after the 1997 reauthorization of IDEA, Congress passed the No Child Left Behind Act (NCLB), the purpose of which was “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 (emphasis added)). Although NCLB applies to all students, including students with disabilities, and IDEA applies only to students with disabilities, both statutes share the goal of raising expectations for the educational performance of students with disabilities and increasing accountability for their educational results. In several places in the law, NCLB makes explicit reference to IDEA.¹¹ Moreover, as noted earlier, IDEA '04 aligns a number of requirements in IDEA with those in NCLB.

¹¹ For example, NCLB mandates that, in order to receive Title I funds, the plan of a State or district must be coordinated with the requirements of IDEA (20 U.S.C. §§ 6311(a)(1), 6312(a)(1)).

At the same time, however, the two statutes differ in that IDEA explicitly allows parents to bring individual claims and seek a remedy. A recent federal court case in New York has held that NCLB does not convey to parents or students “individually enforceable rights” (*Assoc. of Comm. Organizations for Reform NOW v. New York City Dept. of Educ.*, 269 F. Supp. 2d 338, 347 (S.D.N.Y. 2003)).

This section will examine various requirements in NCLB that have implications for providing access to the general education curriculum for students with disabilities. NCLB, which was enacted prior to IDEA '04, uses the earlier phrase found in IDEA '97, “general curriculum,” rather than “general education curriculum” as used in IDEA '04. The relevant provisions of NCLB will be discussed under the three rubrics of access, involvement and progress.¹² In these discussions, “general education curriculum” will be used, unless the words are a direct quote from NCLB.

Access to the General Education Curriculum

Challenging Content and Achievement Standards

IDEA, as noted, requires that students with disabilities have access to the general education curriculum—i.e., the same curriculum as that provided to students without disabilities—but does not elaborate further on the meaning of the term “general education curriculum,” leaving the details to be filled in by States and school districts. NCLB focuses attention on the general education curriculum by requiring that States develop “challenging” academic standards for both content and student achievement for all children in at least mathematics and reading/language arts and, by the beginning of the 2005-2006 school year, science (20 U.S.C. §§ 6311(b)(1)(A)-(C)).¹³ The obligation to develop challenging content standards should help States define the general education curriculum. Moreover, the requirement for States to adopt challenging achievement standards has the potential to raise the level of the general education curriculum. The development of standards is thus a point of intersection for the two statutes: IDEA requires that students with disabilities have access to the general education curriculum, according to their individualized needs, while NCLB helps to define and raise the level of the general education curriculum.

It is significant that the applicability of a State’s challenging academic standards to all students under NCLB is inclusive of students with disabilities. In the Appendix to the statute’s implementing regulations, the DOE states,

Too often in the past, schools and LEAs have not expected students with disabilities to meet the same grade-level standards as other students. The NCLB Act sought to correct this problem by requiring each State to develop grade-level academic content and achievement standards that it expects all students—including students with disabilities—to meet (67 F.R. 71710, 71741).

¹² NCLB is a vast statute with many components. This paper includes only select provisions that relate specifically to access to the general education curriculum for students with disabilities.

¹³ Content standards are to “specify what children are expected to know and be able to do; contain coherent and rigorous content; and encourage the teaching of advanced skills” (20 U.S.C. § 6311(b)(1)(D)(i)). Achievement standards are to be aligned with a State’s content standards and describe at least two levels of high achievement (proficient and advanced), as well as a third level of achievement (basic) (*Id.* § 6311(b)(1)(D)(ii)).

Thus, IDEA and NCLB converge with respect to expectations for the educational performance of students with disabilities: IDEA requires that students with disabilities have access to the same curriculum (according to their individualized needs) as students without disabilities so that they can meet the educational standards that apply to all children; NCLB establishes the expectation that students with disabilities can meet the same standards as students without disabilities.

A High-Quality Curriculum

In addition to the mandate for States to develop challenging content and achievement standards, NCLB also refers, in a number of places, to the use of a high-quality curriculum, further emphasizing the high level expected of a State's general education curriculum. For example, NCLB discusses the shared responsibility of schools and parents to develop a school-parent compact that describes "the school's responsibility to provide *high-quality curriculum* and instruction ... that enables the children served under this part to meet the State's student academic achievement standards" (20 U.S.C. § 6318(d)(1) (emphasis added); see also *id.* §§ 6311(b)(8)(D), 6312(c)(1)(O)). Thus, NCLB raises the level of the general education curriculum by requiring that a State develop "challenging" content and achievement standards and establish a curriculum that is of a "high-quality."

Involvement in the General Education Curriculum

IDEA, as noted, requires that students with disabilities be involved in the general education curriculum. Several provisions in NCLB have implications for such involvement—namely, (1) teacher qualifications, (2) professional development and (3) special programs and services.

Teacher Qualifications

In addition to the development by a State of challenging standards and a high-quality curriculum, in order to raise the level of the general education curriculum NCLB also mandates requirements concerning the qualifications of teachers: Beginning in the 2002-2003 school year, all newly hired teachers had to be "highly qualified," and no later than the end of the 2005-2006 school year, all teachers who teach the "core academic subjects" must be highly qualified (20 U.S.C. § 6319(a)). A teacher who is highly qualified is one who (1) has obtained full State certification or has passed a State teacher licensing examination and holds a license to teach in the State, (2) holds at least a bachelor's degree, and (3) has demonstrated competence in the subjects in which he/she teaches (*Id.* § 7801(23)).¹⁴ Underlying the requirement that teachers be highly qualified is the assumption that such teachers will be better able to teach the general education curriculum established by a State or district.

NCLB defines the core academic subjects as follows: "English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography" (20 U.S.C. § 7801(11)).

Although NCLB is silent on the qualifications of special education teachers, IDEA '04 follows the lead of NCLB and requires that special education teachers be highly qualified, as noted

¹⁴ The specific requirements differ somewhat for elementary and middle/secondary teachers and for newly hired and veteran teachers.

earlier. If students with disabilities are to participate in the general education curriculum, it is important for special education teachers to be knowledgeable about the core academic subjects they teach as well as the impact of the student's disability on development, learning and behavior.

Professional Development

A second area that can be identified as having the potential to facilitate the involvement of students with disabilities in the general education curriculum is professional development. NCLB calls for professional development, for example, that is aligned with State content and achievement standards as well as assessments (20 U.S.C. § 7801(34)(A)(viii)). Such alignment has the effect of linking professional development activities to an understanding of the general education curriculum, an important step for teachers who will be helping students with disabilities to be involved in the general education curriculum. In addition, professional development, to the extent appropriate, is to include training in the use of technology that can improve the quality of teaching in the curricula and core academic subjects (*Id.* § 7801(34)(A)(xi)). The provision of training for teachers in technology is crucial in helping teachers to integrate technology into their instructional practices. Such integration can also play a significant role in helping students with disabilities have access to and participate in the general education curriculum (Rose & Meyer, 2002). IDEA '04 similarly discusses professional development training that incorporates the integration of technology into curricula and instruction (*Id.* § 1454(a)(2)).

NCLB further specifies that professional development should, among other pedagogical activities, “provide instruction in methods of teaching children with special needs” (20 U.S.C. § 7801(34)(A)(xiii)) and “provide training in how to teach and address the needs of students with different learning styles, particularly students with disabilities...” (*Id.* § 6623(a)(3)(B)(ii)). Moreover, NCLB also encourages the development of programs to train and hire regular and special education teachers, including the hiring of special education teachers who will team-teach classes that include students with and without disabilities (*Id.* § 6623(a)(2)(C)(i)). IDEA '04 similarly emphasizes the need to recruit, train and retain highly qualified special education personnel as well as prepare regular education teachers who provide instruction for students with disabilities.¹⁵ Professional development that is instructive to regular education teachers in promoting an understanding of the needs of students with disabilities in their classroom can help teachers provide more effective instruction to these students. Professional development that trains special education teachers to team-teach with regular education teachers is also important. When regular and special education teachers work together, they can pool their resources and expertise toward the goal of involving students with disabilities in the general education curriculum.

Special Programs and Services

Reading First. A third area of NCLB that has the potential to facilitate the involvement of students with disabilities in the general education curriculum relates to special programs and

¹⁵ Although IDEA '04 eliminated the requirement found in IDEA '97 for States to develop a comprehensive system of personnel development, IDEA '04 replaced the State Improvement Grant program with the State Personnel Preparation and Professional Development Grant program, in which States receive funds, to provide professional development training for regular and special education teachers and administrators (20 U.S.C. § 1454(a)(1)).

services that are available to schools and students, like the Reading First program. Reading First assists States and local districts “in selecting or developing effective instructional materials (including classroom-based materials to assist teachers in implementing the essential components of reading instruction), programs, learning systems, and strategies to implement methods that have been proven to prevent or remediate reading failure” (20 U.S.C. § 6361(4)). This program is targeted at children who, among other criteria, are at risk of being referred to special education or are served under IDEA because of a learning disability (LD) related to reading (*Id.* § 6362(c)(7)(A)(ii)(II)). The goal of this program is to help all children learn to read by the end of the third grade (*Id.* § 6361(1)). Research has shown that more than half of all students who are identified for special education services are classified as LD (Vaughn & Fuchs, 2003), and approximately 80% of children with LD have problems with reading (Lyon et al., 2001). The emphasis on reading in NCLB, particularly as part of the Reading First program, has the potential to lead educators to focus on effective instructional techniques in reading that can help students with disabilities be involved in the general education curriculum. Early identification of struggling readers, followed up with carefully targeted literacy instruction, can reduce the number of students referred to special education. Moreover, effective reading instruction in the early grades can provide the foundation for the establishment of literacy skills that are crucial for later content area learning in the core curriculum subjects.

Supplemental Educational Services. NCLB also requires school districts to arrange for the provision of supplemental educational services, from a State-approved provider, for children from low-income families, including children with disabilities, who attend schools that have failed to make “adequate yearly progress” (see “Accountability” under NCLB below) for three consecutive years (20 U.S.C. § 6316(e)(1)). Such services, defined as “tutoring and other supplemental academic enrichment services,” are to be provided outside of the regular school day and are designed to improve the achievement on State assessments of children eligible to receive supplemental educational services and help them attain proficiency in meeting the State achievement standards (*Id.* § 6316(e)(12)(C)). For students with disabilities, the supplemental educational services must be consistent with the child’s IEP (*Id.* § 6316(e)(3)(A)); the services, however, do not have to meet the goals of the IEP and are not considered part of the IEP (67 F.R. at 71757).¹⁶ These services have the potential to facilitate involvement in the general education curriculum because they are designed to help students improve their achievement on State assessments and attain proficiency. Moreover, the interactive one-on-one tutoring creates a focus on the specific needs of the child. Finally, because the tutoring is provided outside the regular school day, the services do not take the child out of class.

Progress in the General Education Curriculum

A major focus of NCLB is the area of assessments and accountability. As noted earlier, IDEA ’04 aligns the requirements in IDEA pertaining to assessments and accountability with some of the provisions in NCLB.

¹⁶ The State and district must make sure that at least some of the available providers are able to provide services to students with disabilities and students covered under Section 504, including necessary accommodations; if no provider is able to make such accommodations, the district has to provide the services with the necessary accommodations “either directly or through a contract” (67 F.R. at 71757-58).

Assessments

General Requirements. NCLB requires States to institute “high-quality, yearly student academic assessments” that are to be the same for all children and are to be aligned with the State’s content and achievement standards (20 U.S.C. §§ 6311(b)(3)(A), (C)(i)-(ii)). The implementing regulations add that the assessments must “be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities” (34 C.F.R. § 200.2(b)(2)). These assessments must include, at a minimum, mathematics and reading/language arts (also science, beginning in the 2007-2008 school year) and are to be the primary measure to determine the annual performance of the State, districts and schools in helping all children meet the State’s achievement standards (*Id.* § 6311(b)(3)(A)). Beginning in the 2005-2006 school year, students must be tested in each of grades 3 through 8 (*Id.* § 6311(b)(3)(C)(vii)) and at least once in grades 10 through 12 (34 C.F.R. § 200.5(a)(2)(ii)). Moreover, because State standards help define the general education curriculum, the assessments under NCLB will also be based on the general education curriculum. These provisions have implications for the provision of access to the general education curriculum for students with disabilities. If students are to be evaluated by means of tests that are based on the general education curriculum, the students must first be taught the material that comprises this curriculum. Therefore, the assessment provisions of NCLB also have the potential to impact access to and involvement in the general education curriculum for students with disabilities. As noted, IDEA ’04 requires that students with disabilities participate in assessments mandated under NCLB.

Reporting. NCLB requires reporting on the results of the assessments and disaggregation by students with disabilities as compared to students without disabilities. NCLB also provides for an exception to the requirement for disaggregation when “the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student” (20 U.S.C. § 6311(b)(3)(C)(xiii)). The implementing regulations add that each State must determine what constitutes the minimum number of students that would provide statistically reliable information (34 C.F.R. § 200.7(a)(2)). IDEA ’04 similarly requires reporting on the assessment results of students with disabilities as compared to the achievement of all children so long as the number of children with disabilities participating is large enough to yield statistically reliable information and reporting will not reveal personally identifiable information (20 U.S.C. § 1412(a)(16)(D)(iv)). As noted with respect to IDEA, assessing students with disabilities and reporting on the assessment results is intended to hold educators accountable for the educational performance of these students. NCLB, however, goes beyond IDEA by also requiring that an individual report of each student’s performance be provided to parents, teachers and principals in “a language that parents can understand” (*Id.* § 6311(b)(3)(C)(xii)), thus including an additional layer of accountability that extends to parents.

Accommodations. NCLB further requires that State assessments provide for the participation of students with disabilities (as defined under IDEA) with accommodations (20 U.S.C. § 6311(b)(3)(C)(ix)(II)). The implementing regulations for NCLB add that the accommodations are to be determined by the student’s IEP team (34 C.F.R. § 200.6(a)(1)(i)). The references to IDEA and the IEP team again show the intended coordination between the two statutes. In addition, it is significant that neither NCLB nor IDEA ’04 address the issues concerning the validity of inferences drawn from scores on assessments on which students receive

accommodations.¹⁷ As noted, there has been little research on the effect of specific accommodations on the validity of inferences made from the scores of students with different types of disabilities.

Alternate Assessments. NCLB also requires that States allow for the use of alternate assessments for those children for whom a determination is made by the IEP team that they cannot take part in the assessment, even with appropriate accommodations (34 C.F.R. § 200.6(a)(2)(i)). The regulations for NCLB also require that alternate assessments provide results for the particular grade in which the student is enrolled¹⁸ for at least reading/language arts and mathematics as well as science beginning in the 2007-2008 school year (*Id.* § 200.6(a)(2)(ii)(A)).

Alternate Achievement Standards. A new aspect added to the implementing regulations of NCLB is the use of alternate achievement standards. The regulations that were published in the Federal Register on December 9, 2003, allow States to develop “alternate academic achievement standards” for students with the most significant cognitive disabilities¹⁹ whose performance is assessed by means of an alternate assessment (34 C.F.R. § 200.1(d)). An alternate achievement standard is “an expectation of performance that differs in complexity from a grade-level achievement standard” (68 F.R. 68698, 68699). It must be “aligned with the State’s academic content standards²⁰; *promote access to the general curriculum*; and reflect professional judgment of the highest achievement standards possible” (34 C.F.R. §§ 200.1(d)(1)-(3) (emphasis added)). As noted earlier, IDEA ’04 refers to the use of alternate achievement standards in several places in the law that pertain to access to the general curriculum: the elimination of short-term objectives and benchmarks does not apply to students being tested against alternate achievement standards, special education teachers of students who are tested against alternate achievement standards must be highly qualified, and alternate assessments must measure the achievement of children with disabilities against the State’s content standards or alternate achievement standards.

The implementing regulations for NCLB further specify that a State is not required to use alternate achievement standards; however, if a State chooses to do so, it must first satisfy a number of conditions, including, for example, the establishment of appropriate guidelines for IEP teams to use in determining whether a student’s achievement should be based on alternate achievement standards as well as documentation “that students with the most significant cognitive disabilities are, to the extent possible, *included in the general curriculum and in assessments aligned with that curriculum*” (34 C.F.R. § 200.6(a)(2)(iii) (emphasis added)).

¹⁷ The regulations do state that assessments should “be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities” (34 C.F.R. § 200.2(b)(2)).

¹⁸ The one exception is for students with the most significant cognitive disabilities whose performance is measured against alternate achievement standards (*see* “Alternate Achievement Standards” under NCLB) (34 C.F.R. § 200.6(a)(2)(ii)(B)).

¹⁹ A previous NPRM (March 20, 2003) had defined students with the most significant disabilities as those “whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean” (68 F.R. 13796, 13801). The final regulations do not include this definition, leaving greater flexibility to the States (68 F.R. 68697, 68700).

²⁰ According to the DOE, alignment with a State’s content standards refers to a “connection between the instructional content appropriate for non-disabled students and the related knowledge and skills that may serve as the basis for a definition of proficient achievement for students with the most significant disabilities” (68 F.R. at 68703).

States would be allowed to use the proficient and advanced scores of students with the most significant cognitive disabilities based on the alternate achievement standards in determining “adequate yearly progress” (see “Accountability” under NCLB below), provided that the number of students who attain a proficient or advanced level based on the alternate achievement standards at the district and State level,²¹ separately, does not exceed 1.0 percent of all students in the grades assessed (34 C.F.R. § 200.13(c)(1)(ii)). If the percentage of students attaining a proficient or advanced level based on the alternate achievement standards exceeds the 1.0 percent cap, the State must make sure that the scores of all students with the most significant cognitive disabilities are included but must count the proficient and advanced scores above the cap as “non-proficient” (*Id.* §§ 200.13(c)(4)(i)-(ii)). States can determine which proficient scores based on the alternate achievement scores to count as “non-proficient,” and they must make sure that parents are informed of the actual achievement levels of their children (*Id.* §§ 200.13(c)(4)(iii), (v)). The DOE explained that the 1.0 percent cap was included in order to ensure that alternate achievement standards are used in a thoughtful manner and to protect against the assignment of children to inappropriate assessments and curricula (68 F.R. at 68706). States and districts can ask for an exception permitting them to exceed the 1.0 percent cap if they can show that the incidence of students with the most significant cognitive disabilities is higher than 1.0 percent of all students in the grades assessed, and if they can explain why the incidence is higher (34 C.F.R. §§ 200.13(c)(2)(i)-(ii), (3)(i)). States and districts requesting an exception must also document that they have fully addressed certain conditions (discussed above) associated with the use of alternate achievement standards (*Id.* §§ 200.13(c)(2)(iii), (3)(i)).²²

The purpose of the new regulations concerning alternate achievement standards is to provide for the inclusion of students with the most significant cognitive disabilities in school accountability systems. According to the DOE,

These regulations are designed to ensure that schools are held accountable for the educational progress of students with the most significant cognitive disabilities, just as schools are held accountable for the educational results of all other students with disabilities and students without disabilities (68 F.R. at 68698).

Allowing the use of alternate achievement standards should help facilitate the participation of students with significant cognitive disabilities in assessments. At the same time, however, certain policy and psychometric issues remain; for example, how a State should go about setting achievement standards (i.e., determining the meaning of “proficiency”).

Accountability

NCLB requires that each State develop a Statewide system of accountability to measure whether schools and districts are making “adequate yearly progress” (AYP) toward enabling all students, including students with disabilities, to meet or exceed the proficiency level on the State assessments no later than twelve years after the end of the 2001-2002 school year (20 U.S.C. §§

²¹ The 1.0 percent cap applies only at the State and district levels, not at the school level, and should be based on the number of students enrolled in the particular grade(s) being tested (68 F.R. at 68706).

²² The DOE has explained, however, that the use of alternate achievement standards at the school level is not unlimited and that it is to be expected that not more than 9.0 percent of all students with disabilities will be tested relative to the alternate achievement standards (68 F.R. at 68700).

6311(b)(2)(A), (F)). Moreover, AYP also requires States to establish measurable annual objectives, applied separately to students with disabilities,²³ which will specify the minimum percentage of students who must meet or exceed the State’s proficiency level on the State assessments (*Id.* § 6311(b)(2)(G)(iii); see also *id.* § 6311(b)(2)(C)(v)). As noted, IDEA ’04 states that performance goals should be the same as the State’s definition of AYP and that performance indicators should include measurable annual goals under NCLB. NCLB further specifies that in order for a school or district to make AYP, not less than 95 percent of students with disabilities²⁴ must participate in the assessments through regular assessments, regular assessments with accommodations, or by means of alternate assessments (*Id.* § 6311(b)(2)(I)(ii)). The regulations add that if a student takes the same assessment more than once, the score from the first administration should be used to determine AYP (34 C.F.R. § 200.20(c)(3)).

In spite of these stringent requirements, it is important to note that NCLB does not attach “high stakes” consequences to testing results, such as the denial of a high school diploma, to individual students. There are, however, serious consequences for schools and districts, which can weigh heavily on school personnel. As part of a State’s accountability system, the district must identify for improvement those schools that have failed to make AYP for two consecutive years (20 U.S.C. § 6316(b)(1)(A)). In addition, the district must allow all students, including students with disabilities, who are enrolled in a school that has been identified for school improvement (i.e., did not make AYP for two consecutive years), the option of transferring to another public school within the district that has not been identified for school improvement (*Id.* §§ 6316(b)(1)(E)-(F)). The regulations add that for students with disabilities covered under IDEA or Section 504, “the public school choice option must provide a free appropriate public education” (34 C.F.R. § 200.44(j)). If the school continues to fail to make AYP after being identified for school improvement, the district must identify the school for “corrective action” and subsequently for “restructuring” (*Id.* §§ 6316(b)(7)-(8)).²⁵

The expectation underlying NCLB is that holding schools accountable for the educational performance of students with disabilities will ultimately lead to improvement in the provision of educational services for these students as well as improved results. At the same time, however, it is also possible that the stringent accountability requirements of NCLB may, in certain respects, have a negative impact on students with disabilities. For example, being identified as a school that has failed to make AYP can lower the morale of both teachers and students, including students with disabilities, especially in light of the fact that sanctions are applied to schools without regard to factors that might contribute to low performance (e.g., lack of resources). Moreover, although NCLB does not attach high stakes for the individual student, such as denial of a high school diploma, many States on their own have done so, with potentially negative consequences for students with disabilities.

²³ Disaggregation is not required when the number of students in the category is so small that the results would not be statistically reliable or would reveal identifiable information about the students (20 U.S.C. § 6311(b)(2)(C)(v)).

²⁴ The 95 percent rule does “not apply in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student” (20 U.S.C. § 6311(b)(2)(I)(ii)).

²⁵ Corrective action may include such measures as replacing staff, implementing a new curriculum, appointing an outside expert or extending the school year or school day (20 U.S.C. § 6316(b)(7)(C)(iv)). Restructuring may include reopening the school as a public charter school, replacing all or most of the school staff or turning over operation of the school to the State or a private contractor (*Id.* § 6316(b)(8)(B)).

IV. Conclusion

Since passage of the EAHCA in 1975, significant improvements have been made in the quality of education provided to students with disabilities. Increased numbers of students with disabilities have been attending public schools and participating in classes with students without disabilities. Moreover, attention has shifted from mainstreaming and inclusion to the meaningful participation of students with disabilities in the regular class. IDEA '97 has played a major role in this evolution, with one of the most important innovations being the requirement that students with disabilities have access to the general education curriculum. Four years after the passage of IDEA '97, Congress passed NCLB, which shares the goal of raising expectations for the educational performance of students with disabilities and increasing accountability for their educational results. IDEA '04 has maintained the focus on access to the general education curriculum, while at the same time introducing a number of changes, several of which were intended to align IDEA with NCLB.

This paper has discussed the legal provisions in IDEA '97, IDEA '04 and NCLB associated with access to the general education curriculum, as well as the translation of these provisions into educational obligations for States and school districts. A theoretical framework has been utilized that conceptualizes the overall right of students with disabilities in IDEA to have access to the general education curriculum as comprising three interrelated stages that form an ongoing cycle: access, involvement and progress. The educational obligations of States and school districts extend to each of these stages. The first stage, "access," requires that the general education curriculum be accessible to students with disabilities. The second stage, "involvement," requires that students with disabilities participate in the general education curriculum in an on-going and meaningful way. The third stage, "progress," requires that students with disabilities be able to demonstrate progress in the general education curriculum through improved educational performance.

The first stage of the cycle involves the accessibility of the general education curriculum to students with disabilities. The implementing regulations for IDEA '97 described the general curriculum as the same curriculum as that provided to students without disabilities but did not elaborate further on the meaning of the term. The requirement in NCLB that States adopt challenging academic content and achievement standards, as well as the emphasis on a high-quality curriculum, should help States to define and raise the level of the general education curriculum. IDEA '04 includes new provisions pertaining to the establishment of the National Instructional Materials Access Center and National Instructional Accessibility Standard (NIMAS) that should help students with print and other disabilities have greater access in a more timely manner to the print materials that are part of the general education curriculum.

With respect to the second stage, involvement in the general education curriculum, IDEA '04 maintains, for the most part, the obligations on the part of school districts that were introduced in IDEA '97. These obligations, centering around the IEP, include specification in the IEP of how the student's disability affects his/her involvement and progress in the general education curriculum; IEP goals that enable the student to be involved in and progress in the general education curriculum; identification in the IEP of supplementary aids and services, program

modifications or supports for personnel that help the student to be involved in and progress in the general education curriculum; explanation of the extent to which the student will not participate in the regular class; and inclusion of the regular education teacher on the IEP team. These requirements are intended to engage students with disabilities as actual participants rather than passive observers in the regular education class. IDEA '04 also includes a focus on functional performance and functional goals and eliminates the requirement for short-term objectives and benchmarks, except for those students who are taking assessments aligned with alternate achievement standards.

In addition, a number of provisions in NCLB have the potential to facilitate greater involvement in the general education curriculum – namely, the requirement that teachers be highly qualified, professional development that focuses on, for example, strategies for providing instruction to students with disabilities in regular education classes, and programs/services such as Reading First and supplemental educational services. While NCLB is silent regarding the qualifications of special education teachers, IDEA '04 specifically requires that these teachers be highly qualified.

Finally, with respect to the third stage, progress in the general education curriculum, both IDEA '97 and IDEA '04 include requirements concerning progress toward IEP goals, participation in State and districtwide assessments, and the establishment of State performance goals and indicators. In the area of assessments, NCLB mandates that States must establish high-quality, yearly academic assessments for all students, including students with disabilities (with accommodations or by means of alternate assessments), and that these assessments must be aligned with State content and achievement standards. Implementing regulations for NCLB also allows for the development of alternate achievement standards for students with the most significant cognitive disabilities whose performance is based on an alternate assessment. IDEA '04 aligns IDEA with NCLB with respect to assessments by stating that the IDEA mandate for the inclusion of students with disabilities in State and districtwide assessments includes assessments required under NCLB. Moreover, IDEA '04 refers to the use of alternate achievement standards in several places in the statute that pertain to access to the general education curriculum.

NCLB also requires the establishment of a system of accountability to measure whether schools and districts are making “adequate yearly progress” (AYP) toward enabling all students, including students with disabilities, to meet or exceed the proficiency level on the State assessments within twelve years. Implementing regulations for NCLB modifies the manner of the inclusion of the performance of students with the most significant cognitive disabilities in determination of AYP by permitting the use of alternate achievement standards in determination of AYP, provided that the number of proficient or advanced scores based on the alternate achievement standards counted towards AYP at the district and State level does not exceed 1.0 percent of all students assessed. IDEA '04 aligns IDEA with NCLB with respect to accountability by stating that performance goals should be the same as AYP and that performance indicators should include measurable annual goals under NCLB.

The accountability system called for under NCLB is intended to increase accountability for the educational performance of all students, including students with disabilities. At the same time,

there is also the possibility that the stringent accountability requirements in NCLB, including the threat of sanctions, may in some instances have a negative effect on students with disabilities. For example, the sanctions are applied without taking into account factors such as a lack of resources and may adversely affect the morale of teachers and students, including students with disabilities. In addition, many States on their own have decided to attach high stakes for the individual student, which can have significant consequences for students with disabilities.

In conclusion, through a discussion of the interrelationship between IDEA and NCLB, this paper has presented a comprehensive analysis of the concept of access to the general education curriculum. It is significant that IDEA '04 has maintained the majority of the provisions pertaining to access to the general education curriculum found in IDEA '97, while at the same time following in the direction of NCLB with respect to requirements pertaining to highly qualified personnel, assessments and accountability. The provisions in IDEA '04 concerning access to the general education curriculum have the potential to lead to increased expectations and improved educational outcomes for students with disabilities.

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