ESEA Reauthorization Update

Conference committee meetings began to address differences between the House and Senate versions of ESEA reauthorization bills. Committee Chairman John Kline (R-MN) said he hopes to have a bill ready for passage of the full Congress by Thanksgiving.

The committee is using the Senate version of the bill as a framework, which includes the use of multi-tiered systems of support and universal design for learning. The Senate version also eliminates AYP and highly qualified requirements. A primary focus for the reauthorization is to return more control of accountability systems to the states.

The framework maintains the one per cent cap of students with the most significant cognitive disabilities who can take the alternate assessment. It also maintains disaggregated reporting of student subgroups, including students with disabilities. Read the framework of the bill which is attached.

In other federal news, the U.S. Department of Education (USDE) released guidance (attached) on Nov. 17 which states that all IEPs should conform to the state’s academic content standards for the grade in which the child is enrolled. The guidance also highlighted the use of standards-based IEPs.

Below are some key quotes in the guidance document:

- The department interprets "the same curriculum as for non-disabled children" to be the curriculum that is based on a state’s academic content standards for the grade in which a child is enrolled;
- This alignment (between state academic content standards and IEP goals), however, must guide but not replace the individualized decision-making required in the IEP process;
- The department recognizes that there are a very small number of children with the most significant cognitive disabilities whose performance must be measured against alternate academic achievement standards;
- In a situation where a child is performing significantly below the level of the grade in which the child is enrolled, an IEP team should determine annual goals that are ambitious but achievable.

The department says this guidance does not impose new rules on states or school districts, but offers information to assist those entities in meeting their obligations under existing law.

The USDE is soliciting feedback on this document, so please email your comments to iepgoals@ed.gov. The department is specifically interested in receiving examples of models of alignment of IEP goals with state content standards that are working well at the state and local level, and how this guidance could be implemented for children with disabilities who are English learners and children with the most significant cognitive disabilities.
ESEA CONFERENCE FRAMEWORK SUMMARY
Every Student Succeeds Act

Repeals adequate yearly progress and replaces it with a statewide accountability system – The framework replaces the one-size-fits-all “adequate yearly progress” federal accountability system under current law with a comprehensive State-designed system that improves State capacity to identify and support struggling schools. States would submit a plan outlining their accountability systems to the Secretary of Education to ensure that the plan is consistent with the law. The system builds on State-led innovation in measuring school performance using multiple measures beyond test scores. States can use other indicators of student achievement and school quality, including student engagement, access to and completion of advanced coursework, and school climate and safety. Under the framework, states are required to improve student learning in the state’s lowest-performing 5 percent of schools, high school dropout factories, and schools in which any group of students is consistently underperforming under the State’s accountability system, and ensures that all students count for the purposes of accountability.

Maintains important information about student performance – The framework maintains annual, statewide assessments in reading and math in grades 3 through 8 and once in high school, as well as science tests given three times between grades 3 and 12. States may pursue flexibility to develop and implement innovative assessments through a pilot program and may choose to offer nationally recognized local assessments at the high school level, so long as those assessments meet technical standards for reliability, validity, and comparability. Recognizing the need to reduce unnecessary testing, the framework authorizes the use of federal funds for states and school districts to conduct audits of state and local assessment systems to eliminate assessments that do not contribute to student learning.

Affirms State control of standards – The framework ensures States are able to choose their challenging academic standards in reading and math aligned to higher education in the state without interference from Washington. The federal government may not mandate or incentivize states to adopt or maintain any particular set of standards, including Common Core.

Helps States to improve low performing schools The framework transfers responsibility to states for identifying schools and providing support for improvement in struggling schools, and prohibits the federal government from interfering in state and local decisions regarding accountability and school improvement activities by prescribing specific methods or systems. Instead of requiring schools to implement the same one-size-fits-all school improvement requirements as they did under NCLB, the framework calls for evidence-based action in any school in which students aren’t learning, but the Secretary cannot prescribe the specific interventions or improvement strategies schools must use.

Improves accountability for learning outcomes for all students – The framework sets high standards for students with disabilities by putting in place a state-level participation cap of 1 percent of students with the most significant cognitive disabilities who can take the alternate assessment aligned to alternate academic achievement standards. Additionally, the framework moves accountability for English language proficiency from a separate system in Title III to Title I, to ensure that States are focusing on the unique needs of students who are learning English. The framework maintains annual reporting of data disaggregated by subgroups of children, including low-income students, students of color, students with disabilities, and English learners, as well as
by migrant status, homeless status, children in foster care, and military-connected children.

**Targets funds to at-risk children** – The framework maintains maintenance of effort and supplement not supplant, with additional flexibility for States and school districts. The framework also authorizes the Secretary to grant flexibility to eligible school districts that demonstrate equitable state and local funding through use of a weighted student funding formula that allocates additional funds based on weighting student characteristics such as low-income and English learner status.

**Helps States increase teacher quality** – The framework provides resources to States and school districts to implement various activities to support teachers, principals, and other educators, including by providing high quality induction services for new teachers, ongoing evidence-based professional development for teachers, and opportunities to recruit new educators to the profession. The framework also ends federal mandates on teacher evaluations, while allowing states to innovate with federal funding. The framework adjusts the allocation of Title II formula funds by ensuring that states with higher numbers of students in poverty receive funding that is reflective of their current student populations.

**Supports at-risk populations** – The framework provides resources to States and school districts to support English learners and requires States to develop statewide entrance and exit procedures for English learner programs to ensure that English learners are reclassified upon achieving English proficiency. The framework provides grants to support programs for American Indian, Alaska Native, and Native Hawaiian students to ensure that schools address the unique academic and cultural needs of these students. The framework updates and improves supports to rural schools by providing more flexible use of federal funding to enable rural districts to more effectively implement programs and updates and strengthens the Impact Aid program, which reimburses eligible local school districts that are near, or serve students from, military bases, federal lands, and Indian reservations, for the loss of property taxes due to certain activities of the federal government. Finally, the framework recognizes the unique challenges that homeless students face and provides the necessary supports for homeless students to enroll, attend, and succeed in school.

**Provides greater funding flexibility to enhance support for students and schools** – The framework authorizes the new Student Support and Academic Enrichment grant program to help States and local school districts target federal resources on local priorities to better serve disadvantaged students. For example, school districts would be able to use these resources to help provide students a well-rounded education, promote the effective use of technology in schools, and protect the health and safety of students. So long as they follow basic requirements, school districts determine how they will spend the additional funding based on local needs and priorities.

**Promotes high-quality choices for parents** – The framework improves the Charter Schools Program by investing in new charter school models, as well as allowing for the replication and expansion of high-quality charter school models. The framework also incentivizes charter school accountability, transparency, and community engagement practices. The framework prioritizes grants to evidence-based magnet school programs, including inter-district and regional magnet programs, and provides opportunities to expand magnet school programs with a demonstrated record of success.

**Maintains and strengthens critical programs** – The framework significantly streamlines and
reduces the number of existing federal programs, while authorizing dedicated funding to support important priorities, including innovation, teacher quality, afterschool programming, increased access to STEM education, arts education, and accelerated learning, safe and healthy students, literacy, and community involvement in schools, and other bipartisan priorities. The framework also authorizes the Preschool Development Grants program. This competitive grant program, will use existing funding to support states that propose to improve coordination, quality, and access for early childhood education and will be administered by the U.S. Department of Health and Human Services jointly with the Department of Education.
November 16, 2015

Dear Colleague:

Ensuring that all children, including children with disabilities, are held to rigorous academic standards and high expectations is a shared responsibility for all of us. To help make certain that children with disabilities are held to high expectations and have meaningful access to a State’s academic content standards, we write to clarify that an individualized education program (IEP) for an eligible child with a disability under the Individuals with Disabilities Education Act (IDEA) must be aligned with the State’s academic content standards for the grade in which the child is enrolled.\(^1\) Research has demonstrated that children with disabilities who struggle in reading and mathematics can successfully learn grade-level content and make significant academic progress when appropriate instruction, services, and supports are provided.\(^2\) Conversely, low expectations can lead to children with disabilities receiving less challenging instruction that reflects below grade-level content standards, and thereby not learning what they need to succeed at the grade in which they are enrolled.

The cornerstone of the IDEA is the entitlement of each eligible child with a disability to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet the child’s unique needs and that prepare the child for further education, employment, and independent living. 20 U.S.C. §1400(d)(1)(A). Under the IDEA, the primary vehicle for providing FAPE is through an appropriately developed IEP that is based on the individual needs of the child. An IEP must take into account a child’s present levels of academic achievement and functional performance, and the impact of that child’s disability on his or her involvement and progress in the general education curriculum. IEP goals must be aligned with grade-level content standards for all children with disabilities. The State, however, as discussed

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\(^1\) The Department has determined that this document is a “significant guidance document” under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices. 72 Fed. Reg. 3432 (Jan. 25, 2007), available at www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf. The purpose of this guidance is to provide State and local educational agencies (LEAs) with information to assist them in meeting their obligations under the IDEA and its implementing regulations in developing IEPs for children with disabilities. This guidance does not impose any requirements beyond those required under applicable law and regulations. It does not create or confer any rights for or on any person. If you are interested in commenting on this guidance or if you have further questions that are not answered here, please e-mail iepgoals@ed.gov or write to us at the following address: U.S. Department of Education, Office of Special Education and Rehabilitative Services, 550 12th Street SW., PCP Room 5139, Washington, DC 20202-2600.

on page five, is permitted to define alternate academic achievement standards for children with the most significant cognitive disabilities.\(^5\)


Since 2001, the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), has required each State to apply the same challenging academic content and achievement standards to all schools and all children in the State, which includes children with disabilities. 20 U.S.C. §6311(b)(1)(B). The U.S. Department of Education (Department), in its regulations implementing Title I of the ESEA, has clarified that these standards are grade-level standards. 34 CFR §200.1(a)-(c). To assist children with disabilities in meeting these grade-level academic content standards, many States have adopted and implemented procedures for developing standards-based IEPs that include IEP goals that reflect the State’s challenging academic content standards that apply to all children in the State.

**Interpretation of “General Education Curriculum”**

Under the IDEA, in order to make FAPE available to each eligible child with a disability, the child’s IEP must be designed to enable the child to be involved in and make progress in the general education curriculum. 20 U.S.C. §1414(d)(1)(A). The term “general education curriculum” is not specifically defined in the IDEA. The Department’s regulations implementing Part B of the IDEA, however, state that the general education curriculum is “the same curriculum as for nondisabled children.” 34 CFR §300.320(a)(1)(i). In addition, the IDEA Part B regulations define the term “specially designed instruction,” the critical element in the definition of “special education,” as “adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.” 34 CFR §300.39(b)(3) (emphasis added). Otherwise, the IDEA regulations do not specifically address the connection between the general education curriculum and a State’s academic content standards.

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\(^5\) In accordance with 34 CFR §200.1(d), for children with the most significant cognitive disabilities who take an alternate assessment, a State may define alternate academic achievement standards provided those standards are aligned with the State’s academic content standards; promote access to the general curriculum; and reflect professional judgment of the highest achievement standards possible. See also 34 CFR §300.160(c)(2)(i).
Analysis

The Department interprets "the same curriculum as for nondisabled children" to be the curriculum that is based on a State's academic content standards for the grade in which a child is enrolled. This interpretation, which we think is the most appropriate reading of the applicable regulatory language, will help to ensure that an IEP for a child with a disability, regardless of the nature or severity of the disability, is designed to give the child access to the general education curriculum based on a State's academic content standards for the grade in which the child is enrolled, and includes instruction and supports that will prepare the child for success in college and careers. This interpretation also appropriately harmonizes the concept in the IDEA regulations of "general education curriculum (i.e., the same curriculum as for nondisabled children)," with the ESEA statutory and regulatory requirement that the same academic content standards must apply to all public schools and children in the State, which includes children with disabilities.

The IDEA statutory and regulatory provisions discussed above, the legislative history of the IDEA, and clarification the Department has provided on the alignment of the IEP with a State's content standards in the Analysis of Comments and Changes to the 2006 IDEA Part B regulations also support this interpretation. When it last reauthorized the IDEA in 2004, Congress continued to emphasize, consistent with the provisions in the ESEA, the importance of "having high expectations for [children with disabilities] 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). The Senate Report accompanying the 2004 reauthorization of the IDEA also explained that "[f]or most children with disabilities, many of their IEP goals would likely conform to State and district wide academic content standards and progress indicators consistent with standards based reform within education and the new requirements of NCLB." S. Rep. No. 108-185, 105th Cong., 1st Sess. 29 (Nov. 3, 2003).

The Analysis of Comments and Changes accompanying the 2006 IDEA Part B regulations also included important discussion that further clarifies the alignment of an IEP with a State's academic content standards under the ESEA, explaining: "section 300.320(a)(1)(i) clarifies that the general education curriculum means the same curriculum as all other children. Therefore, an IEP that focuses on ensuring that the child is involved in the general education curriculum will necessarily be aligned with the State's content standards."4

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The Department’s interpretation of the regulatory language “general education curriculum (i.e., the same curriculum as for nondisabled children)” to mean the curriculum that is based on the State’s academic content standards for the grade in which a child is enrolled is reasonable. This interpretation is also necessary to enable IDEA and ESEA requirements to be read together so that children with disabilities receive high-quality instruction that will give them the opportunity to meet the State’s challenging academic achievement standards and prepare them for college, careers and independence. Therefore, in order to make FAPE available to each eligible child with a disability, the special education and related services, supplementary aids and services, and other supports in the child’s IEP must be designed to enable the child to advance appropriately toward attaining his or her annual IEP goals and to be involved in, and make progress in, the general education curriculum based on the State’s academic content standards for the grade in which the child is enrolled.

Implementation of the Interpretation

Based on the interpretation of “general education curriculum” set forth in this letter, we expect annual IEP goals to be aligned with State academic content standards for the grade in which a child is enrolled. This alignment, however, must guide but not replace the individualized decision-making required in the IEP process.\(^5\) In fact, the IDEA’s focus on the individual needs of each child with a disability is an essential consideration when IEP Teams are writing annual goals that are aligned with State academic content standards for the grade in which a child is enrolled so that the child can advance appropriately toward attaining those goals during the annual period covered by the IEP. In developing an IEP, the IEP Team must consider how a child’s specific disability impacts his or her ability to advance appropriately toward attaining his or her annual goals that are aligned with applicable State content standards during the period covered by the IEP. For example, the child’s IEP Team may consider the special education instruction that has been provided to the child, the child’s previous rate of academic growth, and whether the child is on track to achieve grade-level proficiency within the year.

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\(^5\) The IEP must include, among other required content: (1) 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 progress in the general education curriculum; (2) 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; and (3) 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 to enable the child to advance appropriately toward attaining the annual goals, and to be involved in and make progress in the general education curriculum in accordance with the child’s present levels of performance. 34 CFR §300.320(a).
The Department recognizes that there is a very small number of children with the most significant cognitive disabilities whose performance must be measured against alternate academic achievement standards, as permitted in 34 CFR §200.1(d) and §300.160(c). As explained in prior guidance, alternate academic achievement standards must be aligned with the State’s grade-level content standards. The standards must be clearly related to grade-level content, although they may be restricted in scope or complexity or take the form of introductory or pre-requisite skills. This letter is not intended to limit a State’s ability to continue to measure the achievement of the small number of children with the most significant cognitive disabilities against alternate academic achievement standards, but rather to ensure that annual IEP goals for these children reflect high expectations and are based on the State’s content standards for the grade in which a child is enrolled.

In a case where a child’s present levels of academic performance are significantly below the grade in which the child is enrolled, in order to align the IEP with grade-level content standards, the IEP Team should estimate the growth toward the State academic content standards for the grade in which the child is enrolled that the child is expected to achieve in the year covered by the IEP. In a situation where a child is performing significantly below the level of the grade in which the child is enrolled, an IEP Team should determine annual goals that are ambitious but achievable. In other words, the annual goals need not necessarily result in the child’s reaching grade-level within the year covered by the IEP, but the goals should be sufficiently ambitious to help close the gap. The IEP must also include the specialized instruction to address the unique needs of the child that result from the child’s disability necessary to ensure access of the child to the general curriculum, so that the child can meet the State academic content standards that apply to all children in the State.

An Example of Implementation

We provide an example of how an IEP Team could apply the interpretation of “general education curriculum” set forth in this letter. For example, after reviewing recent evaluation data for a sixth grade child with a specific learning disability, the IEP Team determines that the child is reading four grade levels below his current grade; however, his listening comprehension is on grade level. The child’s general education teacher and special education teacher also note that when materials are read aloud to the child he is able to understand grade-level content. Based on these present levels of performance and the child’s individual strengths and weaknesses, the IEP

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Team determines he should receive specialized instruction to improve his reading fluency. Based on the child’s rate of growth during the previous school year, the IEP Team estimates that with appropriate specialized instruction the child could achieve an increase of at least 1.5 grade levels in reading fluency. To ensure the child can learn material based on sixth grade content standards (e.g., science and history content), the IEP Team determines the child should receive modifications for all grade-level reading assignments. His reading assignments would be based on sixth grade content but would be shortened to assist with reading fatigue resulting from his disability. In addition, he would be provided with audio text books and electronic versions of longer reading assignments that he can access through synthetic speech. With this specialized instruction and these support services, the IEP would be designed to enable the child to be involved and make progress in the general education curriculum based on the State’s sixth grade content standards, while still addressing the child’s needs based on the child’s present levels of performance. This example is provided to show one possible way that an IEP could be designed to enable a child with a disability who is performing significantly below grade level to receive the specialized instruction and support services the child needs to reach the content standards for the grade in which the child is enrolled during the period covered by the IEP. We caution, though that, because the ways in which a child’s disability affects his or her involvement and progress in the general education curriculum are highly individualized and fact-specific, the instruction and supports that might enable one child to achieve at grade-level may not necessarily be appropriate for another child with the same disability.

Summary

In sum, consistent with the interpretation of “general education curriculum (i.e., the same curriculum as for nondisabled children)” based on the State’s academic content standards for the

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7 For information on developing, reviewing, or revising the IEP for a child with limited English proficiency, see: Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives https://www2.ed.gov/policy/speced/guid/idea/osmosdeltrts/q-and-a-on-lp-swd.pdf.

8 While the Department does not mandate or endorse specific products or services, we are aware that many States have issued guidance addressing standards-based IEPs. For example see Minnesota Department of Education, Developing Standards-Based IEP Goals and Objectives A Discussion Guide available at: https://education.state.mn.us/mndprod/idcplg?IdcService=GLT_ELEM&dDocName=050483&RevisionSelectionMethod=latestReleased&Rendition=primary. States and LEAs also may consider reviewing the following examples from OSEP-funded projects regarding implementation of standards-based IEPs: inFortum: Standards-Based Individualized Education Program Examples available at: www.nasdse.org/portals/0/standards-basedidepexamples.pdf. For an example of annual goals aligned with State academic content standards for a child taking the alternate assessment based on alternate academic achievement standards, see an issue brief provided by the OSEP-funded National Center and State Collaborative (NCSC), NCSC Brief 5: Standards-based Individualized Education Programs (IEPs) for Children Who Participate in AA-AAS available at: http://www.ncespartners.org/Media/Default/PDFs/Resources/NCSCBrief5.pdf.
grade in which a child is enrolled set forth in this letter, an IEP Team must ensure that annual IEP
goals are aligned with the State academic content standards for the grade in which a child is
enrolled. The IEP must also include the specially designed instruction necessary to address the
unique needs of the child that result from the child’s disability and ensure access of the child to
the general education curriculum, so that the child can meet the State academic content standards
that apply to all children, as well as the support services and the program modifications or
supports for school personnel that will be provided to enable the child to advance appropriately
toward attaining the annual goals.

Opportunities for Input

We are interested in receiving comments on this document to inform implementation of this
guidance. If you are interested in commenting on this document, please e-mail your comments
to iepgoals@ed.gov or write to us at the following address: US Department of Education,
550 12th Street SW, PCP Room 5139, Washington, DC 20202-2600. Note that we are
specifically interested in receiving input from the field on examples of models of alignment of
IEP goals with State content standards that are working well at the State and local level, and how
this guidance could be implemented for children with disabilities who are English learners and
children with the most significant cognitive disabilities. We will share appropriate models with
you in further communications as they become available. We would also be glad to help answer
your questions and help with your technical assistance needs in this important area.

We ask you to share this information with your local school districts to help ensure all children
with disabilities are held to high standards and high expectations. Thank you for your continued
interest in improving results for children with disabilities.

Sincerely,

/s/
Michael K. Yudin
Assistant Secretary

/s/
Melody Musgrove
Director
Office of Special Education Programs