



Hitting the ground running on ESSA implementation

AS ADVOCATES, WE WORE DOWN

the tread of our running shoes to modernize the rickety No Child Left Behind Act and to restore local governance and community ownership of public education. We crossed the finish line on Dec. 10, 2015, when the Every Student Succeeds Act (ESSA) was signed into law by President Obama.

Federal Insider hopes that local school boards took a well-deserved victory lap when the bill passed.

Like dedicated runners, we know that the next race is just around the corner. Implementation of ESSA is coming to your state, and local school board members are better positioned to have input/impact than at almost any time since the last reauthorization. Are you prepared to hit the ground running?

Four ways that state associations and local school boards have a role in ESSA:

1. **Local governance language in Section 8541 (General Provisions) of ESSA:** Championed by Senators Deb Fischer (R-Neb.), Angus King (I-Maine), and John Tester (D-Mont.), the NSBA-supported language in Section 8541 applies to the entire bill and states that:

Nothing in this Act shall be construed to allow the U.S. Education Secretary to:

- Exercise any governance or authority over school administration, including the development and expenditure of school budgets, unless otherwise authorized under this act;
- Issue any regulation without first complying with the rulemaking requirements of section 553 of title 5, United States Code; or
- Issue any non-regulatory guidance without first, to the extent feasible, considering input from stakeholders.

There are other state and local governance provisions in ESSA for specific things such as standards and assessments, but this historic provision was written with local school boards in mind.

2. **State Title I plan review and comment period:** ESSA requires states to make their Title I plan available for public comment for a period of not less than 30 days prior to submission to the secretary for approval. States must make their plans available by electronic means and in an easily accessible format. Finally,



states must provide an assurance that public comments were taken into account in the development of the plan.

Title I is the single largest federal funding source for public education—providing approximately \$15 billion annually to improve academic outcomes for disadvantaged and vulnerable students. State Title I plans describe how the state will establish challenging standards and assessments, and conduct other components of the state accountability system. Early review and input on the state plan can be empowering for local school boards.

3. **Local school board members are stakeholders for purposes of negotiated rulemaking in ESSA:** The bill requires the Education Secretary to conduct negotiated rulemaking on key Title I provisions in the new law, including standards and assess-



ments. Negotiated rulemaking means that education advocates and Department of Education professional staff work out how regulations should look before the rule is issued for public comment. Local school board members are listed in the statute as a stakeholder group that the Education Secretary should consider for inclusion in the negotiated rulemaking process.

4. **Congress has a role in ESSA implementation—which means school boards do as well:** Congress has a direct and an indirect role in how ESSA is implemented. Congress has oversight over executive branch implementation of the laws that it passes. Through formal inquiries, research requests, and even public oversight hearings, Congress is watching how the Education Secretary puts ESSA into practice. In addition, Congress could have direct input into the Title I regulations described in #3. As local school board members, your opinion matters to Congress, and Congress will have a voice in how ESSA is implemented.

Working with state associations, school boards can team up to make sure that ESSA supports academic success for every school district and student. On your mark, get set, go! 🏁

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OSERS' IDEA present to schools: More Guidance

NOVEMBER WAS THE 40TH BIRTHDAY of the Individuals with Disabilities Education Act (IDEA), having been signed into law by President Gerald Ford in 1975. To celebrate the occasion, the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) recently issued new guidance.

This guidance clarifies that the academic and performance goals in an IEP of a special education student must be aligned with the state's academic content standards for the grade in which that student is enrolled. It is available at <http://1.usa.gov/1MkxyAE>.

In the guidance, OSERS reiterates its belief that children with disabilities should be held to the same high expectations as non-disabled students, and have meaningful access to academic content in the general education curriculum, i.e., the same curriculum available to non-special education students.

For special education students to have meaningful access under the IDEA, OSERS reminds schools

that each student's IEP must include the following:

- Present levels of academic achievement;
- Present levels of functional performance;
- The impact of the student's disability on involvement and progress in the general education curriculum;
- Any necessary specially designed instruction;
- Any necessary supports;
- Any supplementary aids and services; and
- Goals that are aligned with grade-level content standards (though alternate academic achievement standards can be used for students with "the most significant cognitive disabilities").

Because ESEA requires that the same academic content and achievement standards apply to all students at all schools within each grade in each State, OSERS believes those same grade-level standards apply to special educa-



tion students, and the IEP goals should be designed to reflect those standards. Moreover, in its letter, OSERS unequivocally states that it “*expect[s]* annual IEP goals” to be so aligned (emphasis added), but then acknowledges that aligning the goals to state standards cannot replace the individualized process that takes place when designing a special education student’s IEP.

However, this begs the question: How can an IEP team use the individualized IEP development process IDEA requires, but yet still meet OSERS’ “expectation” that all IEPs contain goals that are aligned with state grade-level content standards? OSERS states:

“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.”

This “expectation” seems to usurp the role and responsibilities of the IEP team members. This also poses a challenge for school districts, particularly for those students who are significantly behind their grade level in multiple academic areas.

OSERS tries to address this dilemma when it states that while the content of the IEP goals must be related to grade-level content, the goals “may be restricted in scope or complexity or take the form of introductory or pre-requisite skills.” This would allow IEP teams to operate consistently with the IDEA’s individualized

IEP design process in developing specialized instructional goals, but the teams would, in some instances, simultaneously be running afoul of the goals of this guidance.

If the IEP goals can include content that is “restricted in scope or complexity,” and/or can “take the form of introductory or prerequisite skills,” is that special education student truly accessing the same general education curriculum as other non-disabled students? With IEP goals that are limited in scope and/or include just introductory or pre-requisite skills, can that special education student meet state academic content standards that apply to all children for that grade level?

Also, though the guidance addresses what it identifies as a “small number” of students with “significant cognitive disabilities,” OSERS recognizes that IDEA allows IEP teams to use alternate academic achievement standards to determine advancement towards IEP goals.

However, OSERS reiterates that even those alternate standards themselves also must be aligned with the state’s academic content standards. What is not clear, though, are the academic content standards schools may use for those special education students with significant physical disabilities, and/or have the added challenge of being an English Language Learner.

WHAT DOES THIS MEAN FOR SCHOOLS?

Increased legwork. For students who are significantly far behind their grade-level peers academically, writing IEP goals that are at grade level may not actually be appropriate or achievable, even in a restricted form. In so doing, the IEP team, including the parents, may be doing the student a disservice in setting goals that are outside the student’s identified capabilities and anticipated levels of growth.



More than likely, school-based IEP team members will err on the side of caution and generate more documentation and increased data collection to support the team's proposals for a special education student's IEP goals—particularly when those goals may not be aligned with state academic content standards.

Generally, teams strive to design IEPs to include goals for academic achievement and functional performance that are appropriate for the special education student and are unique to that student's needs. The team takes into consideration the student's current academic abilities, physical capabilities, the impacts of the student's disability or disabilities on learning, and social and emotional development.

Further, depending on the student's age, the team also may take into consideration the student's own expressed areas of interest, either academically, vocationally, or both. As OSERS infers, there is no one-size-fits-all for the instruction and supports in an IEP. This is consistent with the spirit of the IDEA.

For those special education students for whom the team, including the parents, designs goals that may not be aligned with state academic content standards because it determines that the identified goals are most appropriate for that student for the coming year, the team would be wise to document those decisions very clearly in the IEP. They should have already collected the necessary evaluations and other documentation to support that decision.

Possible grounds for OCR complaints? Though IDEA is not an anti-discrimination statute, OCR investigates claims of disability discrimination against "IDEA-only kids" under its asserted authority to do so under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. It is not clear from the OSERS guidance if developing an

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IEP with goals that do not align with state academic content standards would be considered discrimination on the basis of disability.

However, it would seem illogical to make a finding of disability discrimination because a special education student's IEP goals are not aligned with state standards, even though all members of the IEP team, including the parents, made the determination through IDEA's individualized IEP process that the identified goals are actually academically and functionally appropriate for the student.

Lastly, OSERS notes that it is interested in receiving comments about the content and implementation of its guidance. This is a terrific opportunity for school districts and administrators out there in the field who deal with this important area of education to share with OSERS their experiences.

If you are interested in submitting your comments, they can be emailed to iepgoals@ed.gov, or you can write to OSERS at U.S. Department of Education, Office of Special Education and Rehabilitative Services, 550 12th Street, S.W., PCP Room 5139, Washington, D.C. 20202-2600. 📧