


Module 2: The Legal Foundation

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<http://www.usu.edu/taese/Overview.cfm>

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Additional Related Reading

- Karger, J., & Hitchcock, C. (2003). *Access to the general curriculum for students with disabilities: A brief legal interpretation*. National Center on Access to the General Education Curriculum. Retrieved online at:
http://www.cast.org/publications/ncac/ncac_accesslegal.html

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Organization of Presentation

Part 1	Part 2	Part 3	Part 4
The history behind access to the general education curriculum	General curriculum implications for IEP drafting	Implications for students working far below grade level	The legal standard for FAPE

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PART I

The History Behind Access to the General Education Curriculum



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HISTORY

- In 1975, Congress passed the Education for All Handicapped Children Act, introducing the legal concept of the right for children with disabilities to receive a free appropriate public education in the least restrictive environment.

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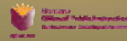
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HISTORY



- The Education for All Handicapped Children Act was reauthorized several times.
- In 1990, the Act was renamed the Individuals with Disabilities Education Act (IDEA).

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HISTORY



- During the 1997 reauthorization of the IDEA, Congress noted “Despite the progress, the promise of the law has not been fulfilled.” H.R. Rep. No. 105-95 (1997).

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HISTORY

- Congress first introduced the concept of “access to the general curriculum” when the IDEA was reauthorized in 1997.



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HISTORY

- “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).



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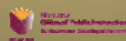
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IDEA 1997

- “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 to the general curriculum* to the maximum extent possible.” 20 U.S.C. §1400(c)(5)(A)(1997) (emphasis added).



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IDEA 2004



- IDEA 2004 places even greater emphasis on the concept of access to the general curriculum.

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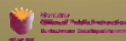
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IDEA 2004



- “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).

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To the Maximum Extent Appropriate



- The starting point is general education with the general education curriculum.
- The IEP team determines “to the maximum extent appropriate” for each child with a disability.

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Summary of Big Ideas



- The concept of access in IDEA 1997 far exceeds the earlier definition of access and goes beyond the concepts of mainstreaming and inclusion.
- Ensuring access to the general curriculum means providing students with disabilities the right to the same curriculum as that provided to students without disabilities.
- The general curriculum is defined by a state's standards framework.

Karger & Hitchcock, (2003)

PART II



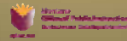
GENERAL CURRICULUM IMPLICATIONS FOR IEP DRAFTING

IDEA

20 U.S.C. §1414(d)(1)(A)(i)

- The IEP means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes –
 - (I) a statement of the child's **present levels of academic achievement and functional performance**, including --

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IDEA

20 U.S.C. §1414(d)(1)(A)(i)

- (a) how the child's disability affects the child's involvement and progress in the general education curriculum.



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IDEA

20 U.S.C. §1414(d)(1)(A)(i)

- (II) a statement of measurable annual goals, including academic and functional goals, designed to –
 - (aa) 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
 - (bb) meet each of the child’s other educational needs that result from the child’s disability.

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IDEA

20 U.S.C. §1414(d)(1)(A)(i)

- (IV) 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 --

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IDEA

20 U.S.C. §1414(d)(1)(A)(i)(IV)

- (aa) to advance appropriately toward attaining the annual goals;
- (bb) to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities.



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Federal Regulations

34 C.F.R. §300.116(e)

- In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that -
 - A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum.

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Federal Regulations

34 C.F.R. §30.530(d)(1)

- A child with a disability who is removed from the child's current placement pursuant to the disciplinary provisions must -
 - Continue to receive educational services, as provided in §300.301(a), so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

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The Comments

71 Federal Register 46577

- “We believe the regulations place great emphasis on ensuring that children with disabilities have access to the general education curriculum.”



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The Comments

71 Federal Register 46577

- “Ensuring that children with disabilities have access to the general curriculum is a major focus of the requirement for developing a child’s IEP.”



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The Comments

71 Federal Register 46662

- “Therefore, an IEP that focuses on ensuring that the child is involved in the general curriculum will necessarily be aligned with the State’s content standards.”

MONTANA CONTENT STANDARDS AT-A-GLANCE							
	Standard 1	Standard 2	Standard 3	Standard 4	Standard 5	Standard 6	
Arts	Students create, perform/sing, and respond in the Arts.	Students apply and describe the concepts, structures, and processes in the Arts.	Students develop and refine arts skills and techniques to express ideas, pose and solve problems, and discover meaning.	Students analyze characteristics and merits of their work and the work of others.	Students understand the role of the Arts in society, diverse cultures, and historical periods.	Students make connections among the Arts, other subject areas, life, and work.	
Career and Vocational Education	Students experience various career opportunities and assess personal career pathways.	Students demonstrate an understanding and apply principles of Resource Management (i.e., financial, time, personal management).	Students acquire and utilize personal and leadership skills to become successful, productive citizens.	Students acquire and demonstrate current technical skills leading to an occupation.	Students know and demonstrate the requirements of the workplace through authentic application.		
Communication Arts	Speaking and Listening: Students know and understand the role of the communication process and demonstrate effective speaking and listening skills.	Reading: Students read by applying foundational skills and strategies to comprehend, interpret, analyze, and evaluate texts.	Literature: Students select, interpret, and respond to a range of literatures.	Media Literacy: Students effectively evaluate and create media messages.	Writing: Students will write to communicate effectively for a variety of purposes and audiences.		

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Conclusion

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

Karger & Hitchcock, 2003.

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Conclusion

- The IEP serves as a central mechanism, both legally and educationally, for ensuring access to the general education curriculum.



Karger, 2004

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PART III

THE IMPLICATIONS FOR STUDENTS WORKING FAR BELOW GRADE LEVEL

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The Challenge

- For students who work on goals that are not closely related to the state's content standards, it can be difficult to meet the requirement to provide opportunities to be involved in and progress in the general curriculum.

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Alternate Academic Achievement Standards

An alternate achievement standard is “an expectation of performance that differs in complexity from grade-level achievement standard.”



68 Federal Register 68698, 68699.

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Alternate Academic Achievement Standards

- According to NCLB, alternate academic achievement standards are not required, but if a state opts to use them, the alternate standards align with the state’s academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest achievement standards possible.

34 C.F.R. §200.1(d).



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Alternate Achievement Content Standards



- According to the United States Department of Education, 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 Federal Register 68703.

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Alternate Content Standards



- The definition of core academic subjects does not vary for secondary students who are functioning significantly below grade level.
- The Act focuses on high academic standards and clear performance goals for children with disabilities that are consistent with the standards and expectations for all students.

71 Federal Register 46552

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Summary

- IEP teams must address the child's opportunity to access and progress in the general education curriculum, even for students working toward alternate content standards.
- IEP goals that focus on the general education curriculum (at an appropriate level of complexity) will result in an IEP that is based on state achievement standards.

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PART IV



THE LEGAL STANDARD

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The Legal Standard

- The *Rowley* standard applies today to determine whether a child was provided FAPE.
- The United States Supreme Court articulated a two-part FAPE test still in use across the country today:
 - Does the IEP comply with the procedural requirements of the statute?



- AND
- Is the IEP reasonably calculated to enable the child to receive some educational benefit?

Board of Education v. Rowley, 458 U.S. 176 (1982).

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The Rowley Standard

- The Ninth Circuit Court of Appeals, the Circuit in which Montana is located, recently reaffirmed the *Rowley* standard, citing its broad applicability in special education disputes.
- In a decision issued in August 2009, the Court stated:
 - “We hold that *Rowley* continues to set the free appropriate public education standard.”



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The Rowley Standard

- “The proper standard to determine whether a disabled child received a free appropriate public education is the ‘**educational benefit**’ standard set forth by the Supreme Court in *Rowley*.”

J.L. v. Mercer Island Sch. Dist., 109 LRP 48649 (9th Cir. 2009).

In Closing

- Since 1975, hundreds of administrative and court cases have addressed the issue of a school district's obligation to provide a child with a disability FAPE in the least restrictive environment.
- The child's IEP serves as the cornerstone to FAPE.
- The legal requirements for an IEP mandate an opportunity for the child with a disability to be involved in and progress in the general curriculum.

- IEPs that are based on the state academic content standards serve as a bridge to the general education curriculum for children with disabilities, and will likely serve as the FAPE standard when challenged.



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References

- Karger, J. (2004). *Access to the general education curriculum for students with disabilities. A discussion of the interrelationship between IDEA and NCLB.* National Center on Access to the General Education Curriculum. Retrieved online at: http://www.cast.org/publications/ncac/ncac_discussion2004.html.
- Karger, J., & Hitchcock, C. (2003). *Access to the general curriculum for students with disabilities: A brief legal interpretation.* National Center on Access to the General Education Curriculum. Retrieved online at: http://www.cast.org/publications/ncac/ncac_accesslegal.html

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