The Legal Framework for Meaningful Accountability

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November 2009

Legal framework for State, School District and School Accountability to ALL Students

- Title I of the Elementary and Secondary Education Act/No Child Left Behind Act
- Individuals with Disabilities Education Act
- Section 504 of the Rehabilitation Act
- Americans with Disabilities Act
- Title VI of the Civil Rights Act of 1964 (race, color, national origin)
- Equal Protection and Due Process Clauses of the Fourteenth Amendment, U.S. Constitution

No Child Left Behind Act

- NCLB enacted January 8, 2002, reauthorized and amended Title I of the Elementary and Secondary Education Act (ESEA) of 1965
- Largest federal education program providing aid to LEAs for education of disadvantaged children -$14 billion annually to improve schools’ academic programs
- Serves 12 million + children in approx. 48000 schools (58% of all), including 96% of schools w. low-income enrollments of 75% or more
- Creates framework at state, district, school levels for ensuring all students, including SwO, become proficient as defined by each state in knowledge and skills identified in each state’s standards by 2013-14

Basic Premise of Title I – Purpose & Intent

- Purpose is “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.”
- Achievement gaps between rich and poor; white and children and of color; children with and without disabilities are not acceptable.
**Legally Mandated State Accountability System under Title I/NCLB**

- Each State must establish single statewide system of accountability to reduce gap between higher & lower achieving students
  - Adopt challenging academic content and achievement standards for all students to learn.
  - Use multiple measures of assessment to see if children are learning
  - Publicly report results of assessments by subgroups (race, LEP/ELL, SPED, low-income) in meeting annual measurable outcomes (AMOs) by school district and school.
  - Use interventions/options when schools do not make adequate improvement (AYP): school choice, SES, corrective action.
- This system (assessments, reporting, determining if meeting AYP) except exceptions applies to all public elementary & secondary schools and districts regardless of receipt of Title I Part A funds.

**Individuals with Disabilities Education Improvement Act of 2004 (IDEA)**

- Signed into law on December 3, 2004, went into effect on July 1, 2005 (with some exceptions) and reauthorized IDEA through 2011
- Congress specifically aligned IDEA with NCLB through new findings; provided more flexibility for greater accountability
- Increased funds & increased requirements for statewide activities
- Placed new emphasis on student achievement and participation in the general education curriculum rather than procedures

**IDEA 2004 Examined in the Context of Standards-Based Education**

- Reaffirms change from low to high expectations
- Requires that all SwDs have access to the general curriculum aligned to state standards reflecting what all students are expected to know and be able to do
- Uses IEP as a tool individually tailored to help a SwD
  - address disability related educational needs that impede learning what all other students are expected to learn;
  - ensure that each SwD is able to receive meaningful benefit;
  - make progress toward closing the achievement gap
- Requires SwDs to participate in assessments to improve teaching and learning
- Increases State, district and school accountability to parents and SwDs

**Key Components of the Legal Framework for Accountability under Title I/NCLB & IDEA:**

- **Academic Standards**
  - NCLB requires adoption and use of the same academic content standards for all students in the State without exception—in mathematics, reading or language arts, and science—include same knowledge and skills, and levels of achievement expected of all students.
  - IDEA requires provision of FAPE “consistent with State educational agency standards”
    - Special education =specially designed instruction to ensure access to the general curriculum so that each child can meet the educational standards that apply to all children
    - State performance goals for SwDs must be the same as the State’s definition of adequate yearly progress under NCLB, including State’s objectives for progress by SwDs; also indicators for measuring progress must include “measurable annual objectives for progress by SwDs under NCLB”
Key Components of the Legal Framework for Accountability under NCLB & IDEA:
Use of Valid Multiple Measures for Assessing All Students

- All students participate in state assessments as primary means of determining yearly progress of the State, district and school in helping students meet the state academic content and achievement standards
- State assessments use valid, reliable, multiple measures for determining whether all students are meeting proficient and advanced levels of mastery of the state’s standards
- State assessments provide reasonable adaptations and accommodations for SwDs

Key Components of the Legal Framework for Accountability under NCLB & IDEA:
Use of Valid Multiple Measures for Assessing All Students

- One or more alternate assessments for SwDs who are unable to participate in the regular assessment even with appropriate accommodations
- Except for students with the most significant cognitive disabilities, for whom State may develop an alternate assessment based on alternate standards, all other alternate assessments must yield results for the grade in which the SwD is enrolled.

Key Components of the Legal Framework for Accountability under Title I/NCLB & IDEA
Public Reporting

- NCLB requires
  - states to collect and “produce individual student interpretive, descriptive, and diagnostic reports...that allow parents, teachers, principals to understand and address the specific academic needs of students” and to receive accurate data about the degree to which the school is enabling students to meet the State standards.
  - Schools and school districts must provide report cards and other public reporting of data (including data disaggregated by racial subgroup, ethnicity, disability, LEP, low-income status), reflecting attendance (k-8), participation in assessments, assessment outcomes with progress toward proficiency by 2013-2014 or AYP also disaggregated by subgroup, high school graduation rate.

Key Components of the Legal Framework for Accountability under Title I/NCLB & IDEA
Public Reporting of Outcomes

- IDEA requires
  - Public reporting of number and percentage of SwDs participating in regular state and district assessments with and without accommodations, alternate assessments based on grade level standards, alternate assessments based on modified standards, alternate assessments based on alternate achievement standards.
### Key Components of the Legal Framework for Accountability under Title I/NCLB & IDEA

**Public Reporting of Outcomes**

**IDEA requires**
- Federal monitoring & State oversight of LEAs using quantifiable indicators in each of the following priority areas:
  - Provision of FAPE in least restrictive environment.
  - State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services...
  - Disproportionate representation of racial and ethnic groups in sped
  - Annual State performance plan (SPP) and state determination of whether LEAs are meeting requirements “including the targets in the State’s performance plan...” e.g., grad. rate, drop-out rate, improved achievement

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### Key Components of the Legal Framework for Accountability: Options for Intervention

- A system of interventions begins when when individual schools, school districts, or the state as a whole fail to make “adequate yearly progress” (AYP)
  - (the degree of improvement required to enable all students in each school’s key subgroups—each racial and ethnic group, low-income students, SWD and LEP, as well as entire student body—to reach a proficient or advanced level by 2014)
  - “in improvement” status
  - Supplemental education services/ transfer
  - Corrective action
  - Restructuring

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### Title I/NCLB as Implemented: Unintended Consequences

- Title I in its NCLB incarnation has become recognized as being about “Accountability for results” – i.e.,
  - using state achievement tests to determine whether students are proficient in mathematics and reading (or language arts) skills that the state has determined all children should learn, and
  - if not enough students in the school (overall and for racial category, and by poverty, disability, and limited English proficiency) are proficient to meet the targets for adequate yearly progress toward goal of all students being proficient by 2013-14 school year, then the school is subjected to increasing levels of interventions to improve performance.
  - Identification of a school in need of improvement perceived as stigmatizing and interventions as punitive.
  - Avoidance of stigma and punishment = force for improvement

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### Issues & Concerns about Narrowly Defining Accountability

- Tendency to narrowly define accountability based on meeting targets measured by single test outcomes and avoidance of identification as under-performing raises serious concerns that many schools may be engaging in practices that do not promote learning and high achievement such as
  - narrowing curriculum and instruction (teaching to the test) and
  - cutting back on subject areas not subject to this definition of accountability;
  - pushing/counseling students out of school
  - providing accommodations that invalidate the assessments
  - using statistical loopholes allowed by federal regulations so as not to count certain subgroups of students

- Increased polarization

- So how can reforms result in SWDs receiving a high quality education?
Other Accountability Framework:
Using a Rights Based Focus to Reform

- Using Title I to focus on every child’s right to a high quality education as a critical lens for making school reform work means:
  - Focusing on each school’s core academic program
  - What does the school need to do to bring about desired student outcomes
  - What does the state and district need to do re/resources and support, technical assistance
- Focusing on the goal that all students learn to proficiency not as a requirement for which a school is sanctioned when not met but as a trigger for attention/action when students are not on track to master what all students should learn.
- Using Title I as a framework for providing federal assistance to improve core academic program of school; and as condition of funding, states establish a system of public education capable of teaching what the state has decided all students shall learn; of providing the basic elements of a quality education.

Elements of a Right to Quality Education within the Framework of Title I of the ESEA

- As a condition of funding, every state identifies challenging knowledge and skills that all students in that state must attain.
- A high quality education is one that enables all students to learn to the high standards that a state adopted for all students to learn.
- Law does not simply require a system for measuring whether students have made adequate progress toward proficiency but has a set of core program requirements.
  - An accelerated enriched curriculum aligned w/state standards of what all students should learn.
  - Effective instructional methods used by qualified teachers to teach students well the things they are expected to learn.
  - Effective and timely individual assistance for students struggling to master knowledge & skills in the state standards.

Civil Rights Laws Complement
Key Title I Program Requirements

- Title VI of the Civil Rights Act of 1964 (race, national origin), Title IX (gender) & Section 504 (disability) bar practices that absent some overriding educational necessity, disproportionately exclude students on one race, color, national origin, or gender, or by disability from the high quality curricula and instruction that schools must provide under Title I.
- Such students are protected from being denied opportunities to learn to high standards; participation in meaningful assessments so as to ensure that they are learning and being taught effectively what they need to know; effective instruction by qualified teachers; and individualized assistance/timely interventions.

Legal Implications of Denying SwDs Meaningful Participation in State Assessments

- Setting lower standards for certain students and depriving them the skills and body of knowledge expected to be learned by all other students without irrefutable proof that giving SwD access to the same level of knowledge and skills is pointless – violates $504$
- If a State adopts lower standards (i.e., less challenging, modified standards at reduced levels of difficulty) for SwDs on basis of their disabilities, it creates an intentional classification based on disability and one that has the effect of subjecting them to lower standards in violation of $504$ and the $14^{th}$ Amendment.
Legal Implications of Denying SwDs
Meaningful Participation in State Assessments

- To be equally effective, an aid, benefit or services “must...afford [disabled] persons equal opportunity to obtain the same result, gain the same benefit, or to reach the same level of achievement...”
- If use of an inappropriate assessment results in inaccurate inferences that are relied upon to deny an SwD access to a program or benefit, §504 may be violated.

Legal Implications of Denying SwDs
Meaningful Participation in State Assessments

- Failure to adopt and implement multiple measures may violate rights of SwDs under NCLB based on regulatory mandate,
  - May violate §504 if the effect is to deny these SwDs the opportunity to participate in the State assessment and accountability system, and to do so effectively.
  - May also violate §504 if the failure to develop multiple measures for assessing SwDs results in wrong inferences being drawn causing harm to the SwD’s education.
- Purpose of multiple measures and relevance to validity

Legal Implications of Denying SwDs
Meaningful Participation in State Assessments

- Failure to provide appropriate accommodations necessary to measure the academic and functional performance of a SwD on a statewide assessment may violate NCLB, IDEA, §504, and the ADA
  - Issues of validity
  - Issues of discrimination

- Failure to develop alternate assessments based on grade-level standards may, in addition to violating IDEA, violate §504 and the ADA if the effect is to deny SwDs from participation in the State’s/district’s accountability and assessment systems

Legal Implications of Denying SwDs
Meaningful Participation in State Assessments

- Limiting assessments, e.g., to “reading” skills instead of assessing broader knowledge and skills subsumed by language arts for all grade levels may violate IDEA, §504, the ADA, and the Fourteenth Amendment if
  - Such limited assessment excludes student with significant reading disability or dyslexia from effective participation in the State/district assessment and accountability systems and
  - Test results are used to make high stakes decisions (e.g., participation in modified assessments, assignment to low track classes, non-diploma track)
- Raises issues of test fairness and validity
- Raises issues of accommodation vs. modification