

EdWeek Market Brief

Marketplace K-12

Jan. 7, 2016

Open Ed. Resources Secure a Spot in the Every Student Succeeds Act

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Open educational resources, widely regarded as posing a challenge to the commercial content industry, have received a potentially major boost with the passage of the Every Student Succeeds Act.

The sweeping federal law signed by President Obama last month contains specific language that allows states and local education agencies to channel block grant money focused on technology toward open materials.

Open materials—often defined as resources released under a license that allows their free use, remix, and sharing by others — have become more popular in districts around the country, where some K-12 officials see them as low-cost materials that give teachers more power to pick and choose the content they want than do commercial products.

At the same time, they're regarded skeptically by many publishers, who say the materials often amount to crude vessels for delivering simplified content, free of academic supports teachers and schools need.

Open education resources, however, have won bipartisan backing on Capitol Hill during the drafting of the ESSA.

Champions of the concept have included Orrin Hatch, a Republican from Utah — whose state was an early adopter in experimenting with open materials — and Tammy Baldwin, a Democrat from Wisconsin, among others.

Open materials weren't mentioned in the earlier version of the federal law, No Child Left Behind. At that time, about 13 years ago, the concept of open educational resources hadn't taken shape — at least not as they're defined today.

The Obama administration has also pushed to support open resources, recently proposing a new regulation that would require any new intellectual property developed with grant funds from the department to be openly licensed.

Then-Secretary of Education Arne Duncan said his department was “encouraging districts and states to move away from traditional textbooks and toward freely accessible, openly-licensed materials.”

Congressional lawmakers included language backing open educational resources as part of block grants through Title IV of the law, supporting student support and academic enrichment.

Specifically, the law says that states can use those federal funds to support local efforts focused on “making instructional content widely available through open educational resources, which may include providing tools and processes to support local educational agencies in making such resources widely available.”

The law also includes a reference to open resources in its definition of “digital learning,” which it says focuses on strengthening students' experiences through technology, and can include “openly licensed content.”

The language represents a significant milestone for open resources, said Reg Leichty, a founding partner



A fourth grade student holds up a dry erase board during a math lesson in the Bethel, Wash., district, which has adopted open ed. resources. —Ian C. Bates for Education Week

at Foresight Law + Policy, a Washington, D.C., firm.

His organization has followed the drafting of ESSA closely, looking at its impact on ed-tech and other areas.

“Congress is saying, ‘We see this happening in schools around the country,’” Leichty said, and “we should be [helping them move] that way.”

Concerns From Commercial Providers

It’s not clear what specific strategies plans districts would pursue, in using federal money for open resources.

Presumably, one option would be for the money to help teachers and other K-12 officials curate and update open materials they’re taking from various sources — a process that can be a heavy lift.

The amount of funding that flows to district open-resources efforts will depend on many factors, Leichty noted. One question will be how much money federal lawmakers appropriate for the block grants, he said. And ultimately, state and local officials will have to decide where open materials fit among their other spending priorities.

TJ Bliss, a program officer at the William and Flora Hewlett Foundation who works on open education resources, said the inclusion of language in the law represents both a symbolic and practical step forward for the materials. The philanthropy has been a major backer of open resources.

“This is a good indication that OER is becoming important to solving key problems in education,” Bliss said, and that the issue is recognized by “policymakers at the national level.”

The language was viewed less favorably by Jay Diskey, the executive director of the Association of American Publishers’ PreK-12 division. His association has said it does not oppose open educational resources, on their own, but it is wary of government officials promoting them in the marketplace in ways the association

believes will hurt companies and leave consumers with fewer choices.

His organization does not see the open education language as posing a threat, but “we are concerned about the signal it sends,” Diskey said.

State and local entities should be encouraged to choose from an array of resources, but without federal officials favoring open or commercially produced sources, Diskey argued. Materials created as open resources might provide good academic content in isolation, but many districts need the broad range wrap-around support, the kind that commercial companies devote significant resources to providing, he said.

“It’s about much more than just content,” Diskey said. “In most cases, what districts want are really innovative projects that involve data analytics, assessment features,” and other components.

The AAP laid out a broader array of concerns in recently submitted comments to the U.S. Department of Education on its proposed regulations requiring intellectual property developed with federal grant funds to be openly licensed.

Among other arguments, the association says the regulation would run afoul of the federal Copyright Act, with the department assuming powers that belong to Congress. The regulation would unfairly “restrict or eliminate” the rights of copyright holders, the AAP said.

The association also argued that the proposal flouts an executive order by President Obama that requires agencies to base their regulations on “the best available science,” among other federal policies.

“AAP has no objections to the availability of open educational resources and respects the department’s desire to provide assistance” in that area, wrote Allan Robert Adler, the AAP’s general counsel and vice president for government affairs, in comments to the department.

But “[t]here simply is no justification for a federal agency to thwart or distort fair market competition by placing its thumb on the economic scales of the market for

educational resources.”

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