

New Regulations for Title I of the ESEA

“Accountability for the Academic Achievement of Students with Significant Cognitive Disabilities”

As we told you in a recent Update, U.S. Secretary of Education Rod Paige on December 9 announced a new provision of the No Child Left Behind education reform law that will give local school districts greater flexibility in meeting the act's requirements for students with disabilities.

CEC has reviewed the final regulations implementing these provisions, and has provided a summary of them – including how the final regulations differ from the March 20, 2003 Notice of Proposed Rulemaking – below.

The new regulation:

- ❖ Provides background information on the inclusion of children with disabilities in state assessment programs including an overview of multiple regulatory attempts (Notices of Proposed Rule Making, or NPRM) to clarify the use of alternate achievement standards for students with significant cognitive disabilities in calculating Adequate Yearly Progress.
- ❖ Identifies and discusses key concepts that are critical to understanding the amendments to the Title I regulations, including: alternative assessments; out-of-level assessments; and the 1.0 percent cap.
- ❖ Lists the significant changes from the March 20, 2003 NPRM including:
 - √ Removing the definition of “students with the most significant cognitive disabilities”;
 - √ Continuing to allow – under specific conditions – but not requiring states to use alternate achievement standards and establishing additional conditions associated with their use (e.g., informing parents and state reporting);
 - √ Requiring states to promote use of appropriate accommodations, providing appropriate guidance to IEP teams, and training for teachers and other staff in administering assessments to this group of students;
 - √ Documenting that these students, to the extent possible, are included in the general curriculum and participate in assessments aligned with content standards
 - √ Retaining the provisions that allow states and LEAs to exceed the 1.0 percent cap and adding additional requirements;

- √ Clarifying that a state must include the scores of all students in this group who have been in the LEA or state for a full academic year in calculating Adequate Yearly Progress, and requiring the state to count, as non-proficient, the scores of those students who exceed the percentage limitations in calculating AYP and determining which proficient scores are counted as non-proficient;
 - √ Adding a section that addresses consistency in the use of scores for this group in calculating AYP and informing parents of actual achievement levels; and
 - √ Affirming the requirement that, if a student takes a state assessment for a particular subject or grade level more than once, the state must use the student's results from the first administration to determine AYP.
- ❖ Attaches an analysis of the comments and of the changes in these final regulations since publication of the NPRM.
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The U.S. Department of Education has also put out a summary of the key provisions in the new regulation. We are including it here as well.

**TITLE I REGULATION ON ALTERNATE ACHIEVEMENT STANDARDS
SUMMARY OF KEY PROVISIONS
DECEMBER 9, 2003**

- 1. States may use alternate achievement standards for students with the most significant cognitive disabilities in meeting the Title I requirements, if certain criteria are met. An alternate achievement standard is an expectation of performance that differs in complexity from a grade-level achievement standard.**
 - ❖ Alternate assessment based on alternate achievement standards must be aligned with a State's academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest achievement standards possible (See §200.1(d)). These standards will be considered during each States' peer review of its standards and assessment system.
- 2. Alternate achievement standards may be used for students with the most significant cognitive disabilities.**
 - ❖ Each State that wishes to use alternate achievement standards must establish clear and appropriate guidelines for individualized education program (IEP) teams to apply in determining when a child's significant cognitive disability justifies an assessment based on alternate achievement standards.

- ❖ The regulation does not create a separate category of disability. Rather, the term “students with the most significant cognitive disabilities” includes that small number of students who are (1) within one or more of the 13 existing categories of disability (e.g., autism, multiple disabilities, traumatic brain injury, etc.) and (2) whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction.

3. When measuring Adequate Yearly Progress (AYP), States and school districts have the flexibility to count the "proficient" and "advanced" scores of students with the most significant cognitive disabilities who take alternate assessments based on alternate achievement standards -- as long as the number of those proficient and advanced scores does not exceed one percent of all students in the grades tested (about nine percent of students with disabilities). Without this flexibility, those scores would have to be assessed against grade-level standards and would be considered "not proficient."

- ❖ Any proficient and advanced scores based on alternate achievement standards (from either alternate or out-of-level assessments) above the 1.0 percent cap must be counted as not proficient relative to grade-level standards. No scores (including those from alternates or out-of-level assessments) may be excluded from AYP calculations. For an alternate assessment based on grade-level achievement standards, all proficient and advanced scores may be counted in AYP calculations.
- ❖ The 1.0 percent cap applies to the number of proficient and advanced scores that may be included in AYP determinations. It does not limit the number of students taking an assessment based on alternate achievement standards. In consideration of small schools and those that provide special services, the 1.0 percent cap is not applied at the school level. This does not mean, however, that the use of alternate achievement standards is unlimited at the school level. For most schools, the expectation is that only a small portion of students with disabilities - those with the most significant cognitive disabilities - will participate in an alternate assessment based on alternate achievement standards and all other students with disabilities will be assessed against grade-level achievement standards.
- ❖ In those circumstances in which a district has more than 1.0 percent of its students score proficient or advanced on an alternate assessment based on alternate achievement standards, the State must determine which proficient scores are counted as non-proficient at schools in the district responsible for students who took an alternate assessment based on alternate achievement standards. This ensures that schools do not have an incentive to inappropriately increase the number of students assessed with an assessment based on alternate achievement standards.

4. If students with the most significant cognitive disabilities take out-of-level assessments, States may include their advanced and proficient scores as results of alternate assessments based on alternate achievement standards, if certain requirements are met.

- ❖ States are expected to assess as many students as possible with academic assessments aligned to grade-level achievement standards. If a State allows out-of-level assessments as an alternate assessment, the advanced and proficient results from those assessments may be included in AYP calculations only if the alternate achievement standards associated with the out-of-level assessments meet the requirements of §200.1(d).
- ❖ Alternate achievement standards associated with out-of-level assessments meet the alternate achievement standards under §200.1(d) only if they 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.
- ❖ All results from out-of-level assessments must be included within the 1.0 percent cap for the purposes of calculating AYP, because the achievement standards associated with the content and skills measured by out-of-level assessments are clearly different in complexity from grade-level achievement standards.

5. The final regulation does not dictate how individual students must be assessed.

- ❖ Under IDEA, IEP teams do not have complete discretion regarding the assessment of students with disabilities. The team decides how a student participates, not whether the student participates in the assessment. Under this Title I regulation, States must develop and disseminate guidelines to inform IEP teams about how students may be assessed appropriately.
- ❖ The final rule does not alter the responsibility of the IEP team to make individual determinations about how a child is assessed. Instead, it restricts, solely for purposes of calculating AYP, the number of scores based on alternate achievement standards that can be counted as proficient or advanced.
- ❖ If an IEP team decides that a student will not participate in any part of the regular assessment, even with appropriate accommodations, the team must identify why the assessment is not appropriate for the child and determine how the child will be assessed, such as through an alternate assessment.

6. Districts and States must work together to manage the use of alternate achievement standards.

- ❖ State guidelines for the use of alternate achievement standards should be communicated to local schools and districts early in the school year to ensure consistency between instruction and assessments and to prevent confusion during test administration. The district should provide information to school personnel and IEP teams about the statewide assessments, appropriate accommodations, and alternate assessments based on alternate achievement standards.
- ❖ Districts should also provide access to appropriate training to support sound IEP decisions about which students should participate in an alternate assessment based on alternate achievement standards. These decisions should always be made on a case-by-case basis and should support access to the most challenging curriculum possible for the individual student. Finally, districts should monitor implementation of assessments based on alternate achievement standards to ensure that alternate achievement standards are being used consistent with the best instructional practices known for students with the most significant cognitive disabilities.

7. States or districts may submit data and make a case to exceed the 1.0 percent cap.

- ❖ States may apply to the Secretary for exceptions in order to slightly exceed the 1.0 percent cap. Likewise, districts may apply for exceptions from their State using a similar process. To ensure that states make timely AYP determinations based on 2003-2004 assessment data, we will inform States of the process and deadline for submitting applications to exceed the 1.0 percent cap. In these applications States must:
 1. Document that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the combined grades assessed.
 2. Describe the circumstances that explain why the incidence of such students exceeds 1.0 percent of all students in the combined grades assessed, such as school, community, or health programs in the State that have drawn large numbers of families of students with the most significant cognitive disabilities, or such a small overall student population that it would take only a very few students with the most significant cognitive disabilities to exceed the 1.0 percent cap.
 3. Document that it is fully and effectively meeting the requirements of §200.6(a)(2)(iii), which includes requirements that states develop guidelines for IEP teams to apply in determining when a child should be assessed based on alternate

achievement standards and ensuring that parents are informed that their child's achievement will be based on alternate achievement standards. In addition, States must report on the use of alternate assessments, and be able to document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum and in assessments aligned with that curriculum.