



**ALTERNATE ACHIEVEMENT STANDARDS FOR
STUDENTS WITH THE MOST SIGNIFICANT
COGNITIVE DISABILITIES**

Non-Regulatory Guidance



August 2005

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Note: This guidance addresses only the implementation of the December 9, 2003 regulation on alternate achievement standards for students with the most significant cognitive disabilities. It does not address the recently proposed “2 percent” policy or the issue of “modified” achievement standards.

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Appendix – Letter from Assistant Secretary Simon dated March 2, 2004

INTRODUCTION

This guidance provides States with detailed information about how best to use and implement alternate achievement standards. The development of alternate achievement standards for students with the most significant cognitive disabilities and their use for making adequate yearly progress (AYP) decisions is authorized under a Department regulation (34 C.F.R. Part 200) published on December 9, 2003. Since the publication of this regulation, the Department has announced its intention to issue a Notice of Proposed Rulemaking (NPRM) that would permit States to assess certain students with disabilities based on modified achievement standards. Once the final regulation is issued, we intend to issue additional guidance that will address how States may implement modified achievement standards. Consequently, this document does not in any way address the issue of modified achievement standards but, rather, only provides guidance on alternate achievement standards for students with the most significant cognitive disabilities. The purpose of the December 9, 2003 regulation was to ensure that students with the most significant cognitive disabilities are fully included in State accountability systems and have access to challenging instruction linked to State content standards. Several critical elements in Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), are designed to ensure that schools are held accountable for educational results so that each and every student can achieve to high standards. State assessments are the NCLB mechanism for determining whether schools have been successful in teaching students the knowledge and skills defined by the content standards. States are required to hold all students to the same standards, except that the December 9, 2003 regulation permits States to measure the achievement of students with the most significant cognitive disabilities based on alternate achievement standards.

Following the publication of the December 9, 2003 regulation, States raised a number of questions about: (1) alternate achievement standards; (2) alternate assessments; (3) the 1.0 percent cap on including proficient scores based on alternate achievement standards in AYP decisions; and (4) implementation practices for both States and local educational agencies (LEAs). This guidance provides answers to those and other relevant questions. The December 9, 2003 regulation and this guidance are designed to support two important goals: (1) ensuring appropriate inclusion of students with the most significant cognitive disabilities in State assessment and accountability systems; and (2) providing flexibility for schools, LEAs, and

States in making AYP decisions. When implemented properly, the December 9, 2003 regulation achieves these goals in several ways. First, a State may develop alternate achievement standards to measure the progress of students with the most significant cognitive disabilities. Second, the number of proficient and advanced scores based on alternate achievement standards included in AYP decisions is limited to 1.0 percent of the number of students enrolled in tested grades (at the State and LEA levels). This cap is designed to ensure that there is not an incentive to assess a student with a disability based on alternate achievement standards if doing so is not appropriate for that child. This cap protects students with disabilities and provides a safeguard against assigning lower-performing students to assessments and curricula that are inappropriately restricted in scope, thus limiting their educational opportunities. Third, in those legitimate, but limited, circumstances when the cap should be higher, LEAs may seek an exception to the 1.0 percent cap from their State, and States may seek an exception from the U.S. Department of Education. This balance between limiting the use of proficient and advanced scores from alternate assessments based on alternate achievement standards and providing flexibility when needed advances the goals of the NCLB.

The Department based its decision to set the 1.0 percent cap on current prevalence rates of students with the most significant cognitive disabilities and converging scientific evidence from multiple sources, while allowing for reasonable local variation. While this cap generally reflects national rates, it may not account for more localized differences in the number of students with the most significant cognitive disabilities. Factors beyond the control of a school, LEA, or even a State may cause the number to exceed the national average percentage. For example, in small LEAs, a proficient score from a single student may be more than the 1.0 percent limit would allow. Moreover, certain LEAs or States may have disproportionate numbers of students with the most significant cognitive disabilities because of proximity to special facilities or services. In such cases, LEAs or a State may seek an exception to the 1.0 percent cap. The opportunity to develop and use alternate achievement standards fundamentally changes the framework for assessing students with disabilities. For States using this flexibility, it is no longer sufficient to ask whether a student will be assessed with the general assessment or an alternate assessment. Instead, State guidelines must provide guidance to Individualized Education Program (IEP) teams to determine whether or not a student with disabilities should be assessed using grade-level achievement standards or, in the case of students with the most

significant cognitive disabilities, alternate achievement standards. As a result, many States are now clarifying the role of alternate assessments in their State assessment systems.

In summary, the use of alternate achievement standards not only ensures that students with the most significant cognitive disabilities are appropriately included in State accountability systems, but it also ensures that schools and LEAs receive credit for their achievement. Prior to the December 9, 2003 regulation, all students (even those with the most significant cognitive disabilities) had to be assessed based on grade-level achievement standards. Now, States may use alternate achievement standards to assess the achievement of students with the most significant cognitive disabilities. When designed appropriately, these alternate achievement standards represent high academic standards for students with the most significant cognitive disabilities. Please note, throughout this document, there is a reference to “the regulation” or “new regulation.” Unless otherwise noted, that reference is to the regulation published by the Department on December 9, 2003 (34 C.F.R. Part 200). This regulation may be found at: www.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.html.

A. INCLUDING STUDENTS WITH DISABILITIES IN THE STATE ASSESSMENT AND ACCOUNTABILITY SYSTEM

A-1. Why should students with disabilities, including those with the most significant cognitive disabilities, be included in State assessment and accountability systems?

There are three basic reasons why including students with disabilities in State assessment and accountability systems is critical. First, it is established law. The Individuals with Disabilities Education Act (IDEA), section 504 of the Rehabilitation Act of 1973, and Title I of the ESEA each require inclusion of all students with disabilities in the State assessment system. Title I further requires that the assessment results for all students (and students in specified subgroups, including students with disabilities) who have been enrolled in a school for a full academic year be used in calculating AYP for the school, and that the assessment results of students who have been in an LEA for a full academic year be used in calculating AYP for the LEA and the State. Under the IDEA, States must ensure that all students with disabilities participate in State and district-wide assessment programs, if necessary with appropriate

accommodations, or take an alternate assessment, and that the assessment results for all students with disabilities are publicly reported, regardless of length of enrollment.¹

Second, students with disabilities, including those with the most significant cognitive disabilities, benefit instructionally from such participation. One State explains the instructional benefits of including students with the most significant cognitive disabilities in its assessment system: “Some students with disabilities have never been taught academic skills and concepts, for example, reading, mathematics, science, and social studies, even at very basic levels. Yet all students are capable of learning at a level that engages and challenges them. Teachers who have incorporated learning standards into their instruction cite unanticipated gains in students’ performance and understanding. Furthermore, some individualized social, communication, motor, and self-help skills can be practiced during activities based on the learning standards.” (Concerns and Questions about Alternate Assessment. www.doe.mass.edu/mcas/alt/QandC.doc January 2005).

Third, to ensure that appropriate resources are dedicated to helping these students succeed, appropriate measurement of their achievement needs to be part of the accountability system. Further, when students with disabilities are part of the accountability system, educators’ expectations for these students are more likely to increase. In such a system, educators realize that students with disabilities count and can learn to high levels, just like students who do not have disabilities. Only by including all students in accountability measures will certain unintended negative consequences be avoided. For example, research suggests that excluding students with disabilities from school accountability measures may lead to dramatically increased rates of referral of students for special education. (See National Center for Educational Outcomes Synthesis 26: <http://education.umn.edu/nceo/OnlinePubs/Synthesis26.htm>)

A-2. How may students with disabilities be included in the State assessment program?

The IDEA Amendments of 1997 required that all students with disabilities be included in State and district-wide assessment programs. Under the IDEA, States have been required to include students with disabilities in regular assessments since 1997 and, beginning July 1, 2000, in alternate assessments. NCLB requires that all students, including students with disabilities, be held to grade-level achievement standards when taking assessments. However, with the

¹ IDEA requires students with disabilities to participate in all State assessments. If a State has a more comprehensive assessment program than required by NCLB, IDEA requires that students with disabilities

publication of the December 9, 2003 regulation, and as determined by each child's IEP team, students with disabilities may, as appropriate, now be assessed through the following means:

- The regular grade-level State assessment
- The regular grade-level State assessment with accommodations, such as changes in presentation, response, setting, and timing. For more information about accommodations, see <http://education.umn.edu/NCEO/OnlinePubs/Policy16.htm>
- Alternate assessments aligned with grade-level achievement standards
- Alternate assessments based on alternate achievement standards.

The 2004 IDEA amendments reinforce that children with disabilities may be appropriately assessed through one of these four alternatives.

The NPRM on modified achievement standards mentioned in the introduction to this document, when published in final form, will create an additional option for the assessment of students with disabilities. The Department will issue a separate guidance document on modified achievement standards after the final regulation is published.

A-3. What methods should a State employ to ensure that the assessment of students with disabilities yields valid results?

The Title I regulations at 34 C.F.R. §200.2(b)(2) require that a State's assessment system be "designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency." In meeting this requirement, States are responsible for designing assessment systems that permit all students in the tested grades to be assessed based on grade-level content and achievement standards. States must first ensure that the assessment is based on State content standards. Then, States field-test their assessments by sampling the type of students expected to participate in the final assessment administration, including students with a wide range of disabilities, students with limited English proficiency, and students belonging to racial, ethnic, and socioeconomic groups. States should also define the assessment's measurement constructs precisely and develop accessible test forms that include bias-free test items; simple, clear instructions and procedures; maximum readability and comprehensibility; and optimal legibility. Accessible assessments also allow for a wide range of accommodations in test administration so that the vast majority of

participate in those assessments.

children with disabilities can participate in the regular assessment. Students with disabilities who are not able to show what they know and can do on the regular grade-level assessment, even with appropriate accommodations, must be assessed with an alternate assessment. Such alternate assessments may be based on grade-level achievement standards or, for those students with the most significant cognitive disabilities, on alternate achievement standards. States have the responsibility to ensure that IEP teams have appropriate choices of accommodations to offer students with disabilities. In general, States bear the responsibility to provide appropriate accommodations and organize training for IEP teams to make good decisions for their students with disabilities.

A-4. What happens if a student uses accommodations in an assessment that cause a test result to be invalid?

In designing State assessment systems, States should work with their test contractor to build an assessment that is accessible for as many students as possible and also to develop accommodations to help students participate. Further, States should develop and widely disseminate guidance about appropriate accommodations that may be used by students with disabilities, and ensure that this information is communicated clearly to school-level educators. The general idea is that the State has a responsibility to create a testing environment that ensures that as many students as possible can take the assessment in a way that produces valid and meaningful results.

IEP teams retain their decision-making authority to determine what, if any, accommodations are needed for a student to take an assessment. If an IEP team determines that a student cannot be assessed with the regular grade-level assessment even with appropriate accommodations, the IEP team must determine whether the child will be assessed through an alternate assessment based on grade-level or alternate achievement standards

Title I includes a measure of participation in the AYP definition. Specifically, for Title I purposes, a student is only considered to be participating if the student takes an assessment that meets the requirements of Section 1111. This includes alternate assessments, which must either be aligned with standards that meet the requirements for alternate achievement standards [refer to §200.1(d)] or aligned to grade-level achievement standards. *Therefore, if a student uses an accommodation that results in an invalid score, the student is considered to be a non-participant*

when calculating the participation rate for AYP purposes. In addition to counting that student as a non-participant, the State must either choose not to include the score from the assessment or include it as a “not proficient score” in calculating the proficiency rate for AYP decisions.

(Note: For IDEA reporting purposes, the State must report on the participation and achievement of all students with disabilities who were assessed. See Part B Annual Performance Report materials at <http://www.ed.gov/policy/speced/guid/idea/bapr/index.html>).

A-5. Is there a conflict between the assessment requirements of NCLB and of IDEA?

No. Both IDEA and NCLB require all students with disabilities to be assessed. For NCLB accountability purposes, however, a student must receive a valid score in order to be considered a participant for AYP purposes. On the other hand, even if a child receives an invalid score and is considered a non-participant for AYP purposes, that child is still considered to have “participated” in an assessment for purposes of IDEA.

A-6. In what grades must States administer alternate assessments?

Under NCLB, through the 2004-2005 school year, a State must have administered alternate assessments in every grade and subject that the State was currently assessing for Title I assessment and AYP purposes. At a minimum, through the 2004-2005 school year, States were required to assess all students in reading/language arts and mathematics at least once in grades 3 through 5, once in grades 6 through 9, and once in grades 10 through 12. Beginning with the 2005-2006 school year, States must assess all students in reading/language arts and mathematics in each of grades 3 through 8 and at least once in grades 10 through 12 and must have corresponding alternate assessments in both reading/language arts and mathematics for each of those grades as well. Beginning with the 2007-2008 school year, States must assess all students in science. States must administer science assessments, including alternate assessments, at least once in grades 3 through 5, once in grades 6 through 9, and once in grades 10 through 12.

If these alternate assessments are based on grade-level achievement standards, they will assess the same grade-level content as the test for which they are an alternate. The assessment procedures may differ from the regular assessment (e.g., include body-of-work or performance tasks instead of multiple choice) but proficiency on these alternates is comparable to proficient

performance on the regular assessment for the same grade. The State must provide evidence of comparability and be able to aggregate the results with results from the regular assessment.

For alternate assessments based on alternate achievement standards in grades 3 through 8 and at the high school level, the assessment materials should show a clear link to the content standards for the grade in which the student is enrolled, although the grade-level content may be reduced in complexity or modified to reflect pre-requisite skills. The State may define one or more alternate achievement standards for proficiency for any grade or cluster of grades. (See question C-3 for additional information.)

The following table explains assessment approaches for students with disabilities as well as their effect on participation rate and proficiency calculations for AYP purposes. The table should be read as follows, using the first row as an example: If a student with a disability (but not a significant cognitive disability) is assessed using the regular state assessment (with or without approved accommodations) that is aligned with grade-level achievement standards and that produces a valid score, that student is considered a participant for accountability purposes, and the scores would count for AYP purposes. This rule would also apply to students with the most significant cognitive disabilities in a State that does not have alternate achievement standards in place—their achievement would be measured against grade-level achievement standards.

Table 1: Requirements for Use of Assessment Results for Students with Disabilities in AYP Calculations

Type of Assessment	Students with disabilities, but not the most significant cognitive disability	Students with the most significant cognitive disabilities
<p><u>Regular assessment</u></p> <ul style="list-style-type: none"> • Aligned with grade-level achievement standards; and • With approved accommodations and a valid score 	<p>Student must be considered a participant and all scores count for AYP purposes.</p>	<p>Applicable in a State that does not establish alternate achievement standards.</p> <p>A student would be considered a participant and achievement would be measured against grade-level achievement standards.</p>
<p><u>Regular assessment</u></p> <ul style="list-style-type: none"> • Aligned with grade-level achievement standards; and • With accommodations that invalidate the score 	<p>For AYP purposes, a State must ensure there is a valid score for each participant.²</p> <p>Student must be considered a non-participant if entire score is invalid.</p> <p>If only part of score is invalid, the State determines whether the valid portion is sufficient to constitute participation and attainment of the achievement level.</p>	<p>Applicable in a State that does not establish alternate achievement standards.</p> <p>A student must be considered a non-participant if entire score is invalid.</p> <p>If only part of score is invalid, the State determines whether the valid portion is sufficient to constitute participation and attainment of the achievement level.</p>
<p><u>Alternate assessment</u></p> <ul style="list-style-type: none"> • Aligned with grade-level achievement standards; • With approved accommodations and a valid score 	<p>Must be considered a participant and may be proficient in AYP calculations</p>	<p>Applicable in a State that does not establish alternate achievement standards. A student would be considered a participant and achievement would be measured against grade-level achievement standards.</p>
<p><u>Alternate assessment</u></p> <ul style="list-style-type: none"> • Based on alternate achievement standards 	<p>If a State permits these students to be assessed based on alternate achievement standards, it would not be consistent with regulation.</p>	<p>Student is a participant and proficient score may be included as proficient in AYP calculations, subject to 1.0 percent cap.</p>
<p><u>Other assessments Used for AYP Title I Assessment System,</u></p> <ul style="list-style-type: none"> • Not aligned with grade-level achievement standards; and • Not based on alternate achievement standards 	<p>Non-participant</p>	<p>Non-participant</p>

² For purposes of IDEA compliance, a student may still be considered to be a participant in a statewide assessment even if the score is invalid for AYP.

B. ALTERNATE ASSESSMENTS

B-1. What are alternate assessments?

An alternate assessment is an assessment designed for the small number of students with disabilities who are unable to participate in the regular grade-level State assessment, even with appropriate accommodations. Under the IDEA Amendments of 1997, all States were required to implement an alternate assessment not later than the 2000-2001 school year. To qualify as an assessment under Title I, an alternate assessment must be aligned with the State's content standards, must yield results separately in both reading/language arts and mathematics, and must be designed and implemented in a manner that supports use of the results as an indicator of AYP. Alternate assessments can measure progress based on alternate achievement standards (see Section C) and can also measure proficiency based on grade-level achievement standards. Alternate assessments may be needed for students who have a broad variety of disabilities; consequently, a State may employ more than one alternate assessment.

When used as part of the State assessment program, alternate assessments must have an explicit structure, guidelines for which students may participate, clearly defined scoring criteria and procedures, and a report format that communicates student performance in terms of the academic achievement standards defined by the State. The requirements for high technical quality set forth in 34 C.F.R. §§200.2(b) and 200.3(a)(1), including validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards, apply to alternate assessments as well as to regular State assessments.³

B-2. What is the typical format for an alternate assessment?

There is no typical or single format for an alternate assessment. Some alternate assessments are built on portfolios of student work or activities that demonstrate knowledge through performance of specific tasks. An alternate assessment may include materials collected under a variety of circumstances, including (1) teacher observation of the student; (2) samples of student work produced during regular classroom instruction that demonstrate mastery of specific

³ The NPRM on modified achievement standards mentioned in the introduction to this document will create an additional option for the assessment of students with disabilities. A separate guidance document will be issued on modified achievement standards after the final regulation is published.

instructional strategies; and (3) standardized performance tasks produced in an “on-demand” setting, such as completion of an assigned task on test day. These are not requirements. They are only examples of different types of alternate assessments. States have considerable flexibility in designing the most appropriate format for alternate assessments.

B-3. What are alternate assessments based on grade-level achievement standards, and how are scores from these assessments incorporated into the accountability system?

An alternate assessment based on grade-level achievement standards (regardless of the format, see B-2) must address the same content and hold students to the same expectations as does the regular test. As part of the standards and assessment peer review process under Title I, a State must document that its results from an alternate assessment based on grade-level achievement standards are comparable in meaning to its results from the regular assessment for the same grade level. Further, alternate assessments need to meet the general Title I requirements for assessments. For AYP calculations, results from an alternate assessment based on grade-level achievement standards should be treated in the same manner as results from the regular assessment. The 1.0 percent cap does not apply to those results.

B-4. What are alternate assessments based on alternate achievement standards?

An alternate assessment based on alternate achievement standards may cover a narrower range of content (e.g., cover fewer objectives under each content standard) and reflect a different set of expectations in the areas of reading/language arts, mathematics, and science than do regular assessments or alternate assessments based on grade-level achievement standards. The questions on an alternate assessment might be simpler than those on a regular assessment or the expectations for how well students know particular content standards may be less complex but still challenging for students with the most significant cognitive disabilities. If a State chooses to use such assessments, it must establish alternate achievement standards through a documented standards-setting process; the assessments based on alternate achievement standards must yield separate results for reading/language arts, mathematics, and (beginning in the 2007-08 school year) science. Proficient and advanced scores in reading/language arts and mathematics from an alternate assessment based on alternate achievement standards may be used in AYP decisions in the same manner as any other scores, subject to the 1.0 percent cap at the LEA and State levels.

(See Section F.) [Note: Science is not included in AYP decisions unless a State has chosen the science assessment as its “other academic indicator” for elementary and middle schools.]

B-5. May a State use student progress on IEP goals or an assessment of functional life skills to meet the Title I regulation requirements?

No. There are at least two reasons why IEP goals or functional life skills are not appropriate achievement measures for AYP purposes.

First, IEP goals are individualized for each student, and a student’s progress toward each goal is measured for purposes of reporting progress to parents and for making individualized decisions about the special education and related services a student receives. In addition, for AYP determinations, test results must ensure consistency in the judgments made about schools. IEP goals are not designed for this purpose.

Second, as required by Title I, schools are accountable for student achievement only in the content areas of reading/language arts and mathematics. IEP goals may address a broad range of individualized instructional needs, as well as behavioral and developmental needs, and might not be based on the State’s academic content standards. IEP goals may cover a range of issues beyond reading/language arts and mathematics, such as behavior, social skills, or the use of adaptive equipment, and, as such, an examination of how well a student met his or her IEP goals is not synonymous with achievement measured by an alternate assessment for AYP purposes. In addition, IEP goals might not be aligned to State standards, and it is not possible to set achievement standards based on those goals. While States and LEAs may develop assessments that measure students’ progress toward IEP goals, such assessments are not required by Title I. In addition, while acquisition of functional life skills may be an important component of some students’ IEPs, it is also critical that such students have access to the general curriculum and that their achievement be counted for AYP purposes.

B-6. Will the State system of alternate assessments be reviewed by the U.S. Department of Education?

Yes. Alternate assessments developed for Title I purposes will be reviewed through the Department’s peer review of State assessment systems. The procedures are set forth in the

Standards and Assessment Peer Review Guidance document. See www.ed.gov/policy/elsec/guid/saaprguidance.doc

B-7. May an out-of-level assessment be included as an alternate assessment aligned with grade-level achievement standards?

No. An out-of-level assessment cannot be included as an alternate assessment because it is not aligned with grade-level achievement standards. Out-of-level testing means assessing students enrolled in a specific grade level with tests designed for students at lower grade levels. By definition, an out-of-level assessment cannot meet the requirements of a grade-level assessment because it does not measure mastery of grade-level content or achievement standards. Out-of-level testing is often associated with lower expectations for students with disabilities, tracking such students into lower-level curricula with limited opportunities. It may also limit student opportunities for advancing to the next grade or graduating with a regular high school diploma. According to the National Center on Educational Outcomes, research does not support the use of out-of-level test scores from State assessments when measuring student proficiency on standards for the grade level in which a student is enrolled. (See Table 1.)

B-8. May an out-of-level assessment meet the Title I requirements concerning “alternate assessments based on alternate achievement standards”?

Under the December 9, 2003 regulations, an out-of-level assessment may be used only as an alternate assessment based on alternate achievement standards to assess students with the most significant cognitive disabilities, and then only if it meets three key Title I requirements. First, the State must use a documented and validated standards-setting process to set the alternate achievement standards for such an assessment. Second, the achievement standards on which out-of-level assessments are based must meet the requirements of 34 C.F.R. §200.1(d) for alternate achievement standards. That is, the achievement standards associated with out-of-level assessments must be aligned with the State’s academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest achievement standards. (See C-5.) Third, scores of students with the most significant cognitive disabilities who take an out-of-level test based on alternate achievement standards 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 from the grade-level achievement standards for the target grade.

Previous guidance from the Department’s Office of Special Education Programs (OSEP) indicated that out-of-level assessments were not allowable alternate assessments [OSEP Memo 00-24 dated August 24, 2000, see question 18: <http://www.dssc.org/frc/AssessmentQ&A.html>]. This new guidance, however, recognizes that out-of-level assessments that are administered to students with the most significant cognitive disabilities and that meet the requirements of the regulation (as outlined above) may be considered to be alternate assessments based on alternate achievement standards and proficient scores on these assessments may count for AYP purposes, under the one percent cap. *An out-of-level assessment that fails to meet these requirements produces invalid results, and students taking such tests must be counted as “non-participants” for AYP purposes.* (See Table 1.)

B-9. If a State has developed a “vertical scale” that relates scores from out-of-level assessments to its grade-level academic content and achievement standards, may a State count the scores of those assessments in AYP calculations?

No. AYP calculations are based on the proportion of students who have demonstrated proficiency on an assessment based on either the State’s grade-level achievement standards or alternate achievement standards. The use of a vertical scoring scale is not sufficient to document that an assessment other than a grade-level assessment has met the statute’s requirements.

For students tested based on grade-level achievement standards, an assessment must be aligned with grade-level content expectations and include measures of higher-order thinking skills and understanding. By definition, an out-of-level assessment does not cover the same content as the grade-level test. Use of a vertical scale cannot ensure that a student has been tested against grade-level standards. Further, for students tested against alternate achievement standards, these standards must be defined using a “documented and validated standards-setting process.” Use of a vertical scale alone is not sufficient to define alternate achievement standards and to meet the requirements of 34 C.F.R. §200.1(d).

C. ALTERNATE ACHIEVEMENT STANDARDS

C-1. What is an alternate achievement standard?

An alternate achievement standard sets an expectation of performance that differs in complexity from a grade-level achievement standard. The December 9, 2003 regulations clarify that a State is permitted to use alternate achievement standards to evaluate the performance of students with the most significant cognitive disabilities.

In general, 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 34 C.F.R. §200.1(d).)

The characteristics of an alternate achievement standard are the same as those described in the Title I assessment regulations for a grade-level achievement standard. That is, they are aligned with the State's academic content standards (although they may reflect prerequisite skills rather than grade-level skills); describe at least three levels of attainment; include descriptions of the competencies associated with each achievement level; and include assessment scores (cut scores) that differentiate among the achievement levels and a description of the rationale and procedures use to determine each achievement level. These standards will be considered during the Department's peer review of each State's standards and assessment system under NCLB.

C-2. Is a State required to develop alternate achievement standards?

No. Section 1111(b)(1) of Title I requires a State to adopt challenging student achievement standards and to apply the same standards "to all schools and children in the State." While all children can learn challenging content, evaluating that learning through the use of alternate achievement standards is appropriate for a small, limited percentage of students who are within one or more of the existing categories of disability under the IDEA (e.g., autism, multiple disabilities, traumatic brain injury), and whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction. Therefore, the regulations permit States to measure the achievement of a limited percentage of students – those

with the most significant cognitive disabilities – against challenging, but alternate, achievement standards.⁴

If a State chooses not to use alternate achievement standards, it must still incorporate the assessment scores of all students with disabilities in AYP determinations, including those students with the most significant cognitive disabilities.

C-3. If a State chooses to develop such standards, how can it do that consistently with the requirements to have tests in grades 3-8 and high school by 2005-06?

If a State chooses to establish alternate achievement standards, such standards must be aligned with the State's academic content standard for the grade in which the student is enrolled (or, in the case of students in un-graded classrooms, the grade level commensurate to the student's age). (See section E-1 for further details.)

There must be a clearly stated definition of proficiency available for students assessed on the basis of alternate achievement standards, and their scores must be reported in relation to this standard. Because these students are often in un-graded classrooms, the idea of grade-by-grade alternate achievement standards for them is somewhat ambiguous. The alternate achievement standards must be challenging for students with the most significant cognitive disabilities and defined in a way that supports individual growth through a linkage to different content across grades. When examined across grades, however, alternate achievement standards are not expected to show the same clearly defined differences in cognitive complexity as the grade-level achievement standards set for the regular test.

A State may thus define alternate achievement standards for grade clusters (e.g., grades 3-5, 6-9 or 10-12) rather than for individual grades. Such standards, however, must reflect the professional judgment of the highest achievement standards possible for this group of students. For example, it is not acceptable for a State to develop a single test that employs a single rubric to define a single proficiency standard that is applied to all students enrolled in grades 3 through 12 who are tested on the basis of an alternate achievement standard. Such an arrangement fails to reflect the changes in content that would be expected across grades and cannot provide an appropriate challenge for older or more capable students.

⁴ The NPRM on modified achievement standards mentioned in the introduction to this document will create an additional option for the assessment of students with disabilities. A separate guidance document will be issued on modified achievement standards after the final regulation is published.

Additional information about this issue can be found in the Department’s peer review guidance for standards and assessment: www.ed.gov/policy/elsec/guid/saaprguidance.doc.

C-4. May States develop multiple alternate achievement standards to address the range of abilities of students with the most significant cognitive disabilities?

Yes. A State may set more than one alternate achievement standard. If, however, a State chooses to define multiple alternate achievement standards, it must employ commonly accepted professional practices to define the standards; it must document the relationship among the alternate achievement standards as part of its coherent assessment plan; and for AYP purposes it must apply the 1.0 percent cap to all proficient scores based on alternate achievement standards that meet the requirements in 34 C.F.R. §200.1(d). One reason why a State might choose to develop more than one alternate achievement standard is to promote access to the general curriculum and to ensure that students are appropriately challenged to meet the highest standards possible.

C-5. What is meant by “professional judgment of the highest achievement standards possible?”

Title I requires that, for the general assessment, States establish challenging academic content standards that contain rigorous content and encourage the teaching of advanced skills, and challenging student achievement standards that determine how well students are mastering this content. States must create the achievement standards with all students in mind, so that they are realistic for a wide variety of individuals. The standards should represent a consensus among experienced teachers, parents, and other appropriate individuals regarding the performance expected after appropriate student effort in a challenging instructional program. Students with the most significant cognitive disabilities who participate in an alternate assessment based on alternate achievement standards are entitled to the same deliberate approach to defining achievement standards that represent a rigorous but realistic challenge for this heterogeneous group of students and a challenging long-range goal for their school and LEA. The term “highest achievement standards possible” is intended to reflect that the alternate achievement standards should be no less challenging for students with the most significant cognitive disabilities than the standards set for all other students.

C-6. Who is eligible to participate in alternate assessments based on alternate achievement standards?

Only students with the most significant cognitive disabilities may be assessed based on alternate achievement standards. The regulation does not create a new category of disability. Rather, the Department intended the term “students with the most significant cognitive disabilities” to include that small number of students who are (1) within one or more of the existing categories of disability under the IDEA (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.

It is the State’s responsibility to define which students have the most significant cognitive disabilities. It also is the State’s responsibility to establish clear and appropriate guidelines for IEP teams to use when deciding if an alternate assessment based on alternate achievement standards is justified for an individual child. These guidelines should provide parameters and direction to ensure that students are not assessed based on alternate achievement standards merely because of their placement outside the regular classroom, their disability category, or their racial or economic background. (See D-3 for more information about these guidelines.)

In most schools, students with the most significant cognitive disabilities represent a small portion of students with disabilities who would appropriately participate in an assessment based on alternate achievement standards; all other students with disabilities must be assessed against grade-level standards. In general, the Department estimates that about 9 percent of students with disabilities (approximately one percent of all students) have significant cognitive disabilities that qualify them to participate in an assessment based on alternate achievement standards.

D. INDIVIDUALIZED EDUCATION PROGRAM (IEP) TEAMS

D-1. What are State responsibilities in supporting sound IEP team decisions?

For assessments under Title I, an IEP team operates in an environment in which the academic content and achievement standards and assessments are set by the State, the technical qualities of the State assessments are well established (and include policies on the use of

accommodations that do not invalidate test results on all or part of the assessment), and the State has provided guidelines regarding eligibility for alternate assessments.

As specified through IDEA, IEP teams have ultimate responsibility for making instructional, curricular, and assessment decisions for each student with a disability. However, in fulfilling this responsibility, the State plays an important supportive role. States, as required by the December 9, 2003 regulation, must provide appropriate guidance to IEP teams about alternate assessments, accommodations, and alternate achievement standards. Further the IDEA, as amended in 2004, also requires that States have developed and implemented guidelines for appropriate accommodations and for the participation of children with disabilities in alternate assessments. For example, the State must provide IEP teams the list of the accommodations approved for use with the statewide assessment. The State can also support sound IEP team decisions by evaluating the effectiveness of accommodations and by encouraging local monitoring of test administration to ensure that students actually receive the accommodations recommended. Regular analysis of accommodations use may also indicate a need for additional training.

D-2. How does the Title I regulation authorizing alternate achievement standards affect IEP team decisions about appropriate assessments?

The IEP team responsibility is unchanged by this regulation; the IEP team continues to determine how a student will participate in a State assessment of student achievement. It is important to keep in mind that the IEP team decides how a student participates, not whether a student participates in the assessment at all. The IEP team is also charged with determining whether accommodations for the assessments required under Title I are needed by each individual student to enable the student to participate in the assessment. If the IEP team determines that a student will not participate in the regular assessment, the team is required to identify why the assessment is not appropriate for the child and how the child will be assessed, such as through an alternate assessment.

D-3. What are the requirements for State guidelines to IEP teams about participation in an alternate assessment based on alternate achievement standards?

Title I regulations require States to develop and disseminate guidelines to IEP teams concerning statewide assessments, appropriate accommodations, and, if applicable, alternate assessments based on alternate achievement standards. These State guidelines should provide appropriate information for IEP teams about how to select accommodations for students with disabilities when they are participating in the statewide assessment system. These guidelines, which are required by Title I regulations, should include information on which test accommodations are valid and which accommodations in administration will invalidate part or all of the assessment. The guidance should clearly state whether accommodations that invalidate the assessment are permissible. IDEA, as amended in 2004, also requires that States have guidelines on the provision of appropriate accommodations.

The guidance should also emphasize that students with the most significant cognitive disabilities should have access to the general curriculum; an exclusively functional curriculum will not serve these students well. Further, the State must communicate to IEP teams that they should make decisions for each individual student, and that those decisions should not be based on disability category or other similar qualities. As the state of the art continues to improve in this area, we have identified some ideas that States have included in these IEP guidelines.

- Criteria that each student must meet before participating in alternate assessments based on alternate achievement standards
- Examples or case study descriptions of students who might be eligible to participate in such an assessment
- Accommodations that are available for the assessments, and any special instructions that IEP teams need to know if such accommodations require special permission or materials (e.g., Braille editions of the assessment)
- Flow charts for determining which accommodations are appropriate and/or which assessment is appropriate
- Timelines for making these decisions
- Any consequences that affect a student as a result of taking an alternate assessment based on alternate achievement standards (e.g., in some States, students are not eligible for a regular high school diploma if they take this type of assessment)
- Any consequences that affect a test score as a result of using a particular accommodation
- Approaches for ensuring students have access to the general curriculum

- Commonly used definitions
- Information about how results are reported for individual student reports and in school or district report cards

Obviously, this list is not exhaustive and States will have their own approach for providing these guidelines, but these are some common elements in guidelines to IEP teams. As another resource, the National Center for Educational Outcomes has a webpage, which provides links to State guidelines on this issue:

<http://education.umn.edu/NCEO/TopicAreas/Participation/StatesParticipation.htm>

E. ALIGNMENT

E-1. What does it mean to have alternate achievement standards that are aligned with the State’s academic content standards?

Alternate achievement standards are substantially different expectations for student mastery of grade-level content, but they may not be defined as skills that are wholly independent of a State’s academic content standards. Setting alternate achievement standards is the final step in an assessment development process that includes consideration of the content to be assessed, the manner in which student understanding of that content will be demonstrated, the method for scoring student responses/products, and the manner in which student results will be reported. States will find it necessary to consider each component, beginning with the content on which students with the most significant cognitive disabilities will be assessed. This should be content that is clearly related to grade-level content, although it may be restricted in scope or complexity or take the form of introductory or pre-requisite skills. The task of defining alternate achievement standards in reading/language arts, mathematics, or science for students with the most significant cognitive disabilities should begin with consideration of the State’s academic content standards for the grade in which the student is enrolled, then adapting or “extending” those content standards to reflect instructional activities appropriate for this group of students. The next step should be designing an assessment that allows these students to show what they have learned along with a method of scoring the assessment. Finally, a group of experienced special educators and, as appropriate, parents and other individuals, should be convened to

examine a sufficiently large sample of student responses and to determine the type of response(s) that is regarded as proficient for this group of students.

E-2. How can alternate assessments based on alternate achievement standards be aligned with a State’s academic content standards?

In practice, alignment with the State's academic content standards means that a State has defined clearly the connection between the instructional content appropriate for non-disabled students and the related knowledge and skills that serve as the basis for a definition of proficient achievement for students with the most significant cognitive disabilities.

One State, for example, has developed a curriculum framework for students with the most significant cognitive disabilities that moves from grade-level expectations to gradually less complex versions of the standard. This continuum provides a range of entry points at which a student with disabilities can access the content at an appropriately challenging level. For example, it lists the following skills for grades 3 through 4 content standards under Mathematics Operations: “Select, use and explain various meanings and models of multiplication and the division of whole numbers. Understand and use the inverse relationship between the two operations.” The State’s standards document also identifies the essence of the standard in several brief statements, e.g., “understand the meaning of multiplication and division; and represent multiplication and division problems concretely.” The State then provides several illustrations of the knowledge and skills appropriate for use in the alternate assessment. These range from the less complex, “Illustrate the concept of multiplication using groups of objects,” to more complex knowledge that approaches grade-level expectations, such as “Identify the commutative property of multiplication using number sentences ($3 \times 5 = 5 \times 3$).” See <http://www.doe.mass.edu/mcas/alt/rg/math.doc>.

Alternate achievement standards may include prerequisite or enabling skills that are part of a continuum of skills that culminates in grade-level proficiency. The use of alternate achievement standards, however, must not result in inappropriate placements or assignment of students to a curriculum that does not include academic content.

F. ONE PERCENT CAP

F-1. What is the 1.0 percent cap?

Under the December 9, 2003 regulation, when measuring AYP, States and LEAs have the flexibility to count the proficient scores of students with the most significant cognitive disabilities who take alternate assessments based on alternate achievement standards—so long as the number of those proficient scores does not exceed 1.0 percent of all students in the grades assessed (about nine percent of students with disabilities) at the LEA and State levels. The 1.0 percent cap is based on current incidence rates of students with the most significant cognitive disabilities, allowing for reasonable local variation in prevalence.

The 1.0 percent cap does not apply at the school level. Some LEAs may deliver special services for students with the most significant cognitive disabilities in one or a few schools. Additionally, the enrollment patterns of students across LEAs might not result in an even distribution of students with the most significant cognitive disabilities among schools, even if there are no special centers for these students. In these cases, a 1.0 percent cap on the number of students who may be counted as scoring proficient or advanced on alternate assessments based on alternate achievement standards would prove unworkable at a school level and not be in the best interests of those students.

The 1.0 percent cap does not restrict the number of students who may participate in an alternate assessment. It does limit the number of proficient and advanced scores based on alternate achievement standards that may be used in the calculation of AYP. A limit is required to ensure a thoughtful application of alternate achievement standards and to protect IEP teams from pressure to assign low-performing students to assessments and curricula that are inappropriately restricted in scope, thus limiting educational opportunity for these students.

F-2. How is the 1.0 percent cap calculated?

The 1.0 percent cap is based on the number of students enrolled in the tested grades. This means that if a State is presently testing in only three grades, the 1.0 percent calculation is based on the number of students in those three grades. The number of students in a tested grade is based on enrollment at the time of testing, including students who are publicly placed in a private school to receive special education services.

F-3. How is a student with a disability who is placed in a private school by an LEA included in the assessment and accountability system?

A student with a disability who is publicly placed in a private school is included in the assessment and accountability system in three ways. First, under 34 C.F.R. §300.401(b), these students must be provided an education that meets the standards that apply to education provided by the State and LEA. Therefore, the State’s academic standards apply to these students, and the students must participate in the State’s academic assessment system. Second, the assessment results from students with disabilities who are placed in or referred to a private school or facility by a public agency, as a means for providing special education and related services, must be included in LEA and State AYP decisions. The assessment scores must be used in determining AYP for the LEA that placed them in the private school or facility and for the State. Third, such students are considered as enrolled in the district when determining how many scores can be included, subject to the 1.0 percent cap, as proficient or advanced based on alternate achievement standards.

F-4. Does the 1.0 percent cap limit access of students with disabilities to alternate assessments based on alternate achievement standards?

No. The rule does not limit the number of students with the most significant cognitive disabilities who may take an alternate assessment based on alternate achievement standards when that is appropriate. It addresses only the inclusion of proficient and advanced scores from alternate assessments based on alternate achievement standards in AYP calculations.

G. EXCEPTION

G-1. What is the process for a State to request an exception to the 1.0 percent cap?

A State may request a slightly higher cap from the Secretary if the State can meet several criteria established in the Title I regulations. Those criteria address such issues as incidence rates of students with the most significant cognitive disabilities; circumstances in the State that explain a higher incidence rate (such as specialized health programs or facilities); and documentation

that the State has implemented several safeguards that limit the inappropriate use of alternate assessments based on alternate achievement standards.

If a State requests an exception to the 1.0 percent cap, the State must document that it is fully and effectively implementing the procedural safeguards set out in 34 C.F.R. §200.6(a)(2)(iii) to demonstrate that it is appropriately including students with disabilities in its assessment system. The documentation would include information about the following (summary of §200.6(a)(2)(iii)):

- Guidelines for IEP teams to determine when a child's significant cognitive disability justifies the alternate assessment based on alternate achievement standards.
- Information about how parents are informed that their child will be assessed based on alternate achievement standards, including information about the implications of participation in the alternate assessment if the State has identified consequences for students based on assessment results (e.g., if the State requires a student to pass an assessment based on grade-level achievement standards to graduate).
- Documentation of the number and percent of students taking an alternate assessment based on alternate achievement standards, alternate assessments based on grade-level achievement standards, and regular assessments (with or without accommodations).
- Documentation that describes how students with the most significant cognitive disabilities are included in the general curriculum and that shows how alternate assessments are aligned with that curriculum.
- Documentation of efforts taken by the State to develop, disseminate information on, and promote the use of appropriate accommodations.
- Documentation of efforts (such as professional development or guidance documents) taken to ensure teachers and other staff know how to administer assessments, including appropriate use of accommodations.

Because of these safeguards, the Secretary expects that it will be necessary to grant (and has so far granted) exceptions only for small increments above the 1.0 percent cap. A State should indicate in its request the amount of time for which it is seeking the exception.

An exception to the 1.0 percent cap should be requested in writing no less than three months before final AYP decisions are made. If a State does not meet that deadline, the Department may not be able to consider that request before the State's deadline for identifying

schools for improvement. Attached as an Appendix to this guidance is the March 2, 2004 letter sent by Assistant Secretary Ray Simon, which provides additional guidance to States on this process. The letter can also be found at: www.ed.gov/admins/lead/account/csso030204.html

G-2. How may a State grant an exception to an LEA to exceed the 1.0 percent cap?

Using a similar process to the one described in G-1, a State may grant permission to an LEA to exceed the 1.0 percent cap. States do not need to apply for an exception from the Department in order to grant exceptions to their LEAs. As States consider whether to allow any exceptions, however, they should be mindful of how individual LEA exceptions will affect the overall 1.0 percent cap that applies at the State level. Exceptions should not be granted on the basis of poor or inaccurate identification or the inappropriate use of alternate achievement standards. Instead, exception requests might be granted if an LEA addresses satisfactorily certain issues, such as incidence rates of students with the most significant cognitive disabilities; circumstances in the LEA that would explain the higher incidence rates (such as specialized health programs or facilities); and documentation that the LEA has implemented several safeguards that limit the inappropriate use of alternate achievement standards. These safeguards include implementing State guidelines through the IEP process; informing parents about the actual achievement of students; reporting, to the extent possible, on test-taking patterns; including these students in the general curriculum; providing information about the use of appropriate accommodations; and ensuring that teachers and other educators participate in appropriate professional development about alternate assessments.

G-3. When may a State grant an exception to an LEA?

A State may grant an exception to the 1.0 percent cap to an LEA before or after assessments are administered for a particular year. The granting of an exception may not delay the identification of schools for improvement.

G-4. Does the 1.0 percent cap put specialized schools and small LEAs at a disadvantage?

No. For small LEAs, there is an opportunity to seek an exception to the 1.0 percent cap. The 1.0 percent cap on proficient and advanced scores based on alternate achievement standards applies specifically at the State and LEA levels, although scores must be treated the same for

AYP purposes at the State, LEA, and school levels. An extraordinarily effective school that draws students with the most significant cognitive disabilities from across the LEA, or from outside the LEA, may exceed the limit so long as the total number of proficient and advanced scores based on alternate achievement standards does not exceed the 1.0 percent cap within the LEA. The LEA has considerable discretion in accommodating such schools when determining how not to exceed the 1.0 percent cap.

G-5. If an LEA receives an exception, how often must it reapply for that exception?

As stated in 34 C.F.R. §200.13(c)(3)(ii), a State must review regularly whether an LEA's exception to the 1.0 percent cap is still warranted. This does not mean the LEA must submit an exception request each year. Instead, the State should monitor the implementation of this exception on a regular basis and determine its necessity.

**H. IMPLEMENTATION OF THE 1.0 PERCENT CAP:
ADEQUATE YEARLY PROGRESS**

H-1. How does the 1.0 percent cap work in practice?

The 1.0 percent cap (calculated at the State and LEA levels) is based on the number of students enrolled in the grade(s) tested. The following example illustrates how the policy should work in practice. As determined by the 1.0 percent cap, a LEA with 10,000 students in the grades assessed may count for AYP purposes no more than 100 students scoring proficient or advanced on an alternate assessment based on alternate achievement standards. This LEA has 150 students taking the alternate assessment based on alternate achievement standards, but only 100 students score at the proficient level on this assessment. Since the number of proficient scores does not exceed the cap, all such scores from the alternate assessment based on alternate achievement standards may be included as proficient in the relevant schools' AYP determinations. The remaining 50 non-proficient scores would also be included in the schools' AYP calculations. Because only 100 of the 150 of the students assessed with an alternate assessment based on alternate achievement standards are proficient, the LEA would not exceed the cap.

H-2. What if a State or LEA has more than 1.0 percent of its students scoring proficient on an alternate assessment based on alternate achievement standards?

The 1.0 percent cap (calculated at the State and LEA levels) is a limit on the number of proficient or advanced scores based on alternate achievement standards that may count as proficient or advanced for AYP purposes. The following example illustrates the implications for an LEA where more than 1.0 percent of its students score proficient on an alternate assessment based on alternate achievement standards. The 1.0 percent cap requires that an LEA with 10,000 students in the grades assessed may count for AYP purposes the scores of no more than 100 students scoring as proficient on an alternate assessment based on alternate achievement standards. If 150 students in this LEA score proficient or advanced on an alternate assessment based on alternate achievement standards, (and the LEA has not received an exception from the State to exceed the 1.0 percent cap), the LEA must:

- 1) Determine which 50 proficient scores will be considered not proficient, and
- 2) Count these excess 50 scores as not proficient in each subgroup that each student is in (e.g., all students, a racial/ethnic group, and students with disabilities).

H-3. What principles should guide the implementation of the 1 percent cap?

A few principles should guide the implementation of this process. First, regardless of how an individual student's score is treated in AYP calculations, the parent must be informed of the actual academic achievement level earned by his or her student. Second, all scores based on alternate achievement standards must be included in school, LEA, and State AYP calculations. Moreover, individual student's results from such assessments must be counted in all appropriate subgroups. Third, each student's score used for calculating AYP must remain the same at each level of the educational system – school, LEA, and State, and for each subgroup of which the student is a member for which AYP is calculated. Fourth, in those circumstances in which more than 1.0 percent of the students score proficient or advanced on an alternate assessment based on alternate achievement standards in an LEA, the State should work with the LEA to determine which proficient scores are counted as non-proficient at schools in the LEA responsible for students who took an alternate assessment based on alternate achievement standards. This ensures that schools do not have an incentive to increase inappropriately the number of students assessed with an alternate assessment based on alternate achievement standards.

H-4. What are the different methods a State may use to determine which scores to count as not proficient?

There are several models for the distribution of proficient scores that exceed the 1.0 percent cap. All proficient scores based on alternate achievement standards that exceed 1.0 percent of total enrollment in the grades tested must be counted as non-proficient against grade-level standards in AYP calculations. These scores are hereinafter referred to as “redistributed non-proficient scores.” A paper written by Tiffany Martinez and Ken Olsen of the Mid-South Regional Resource Center funded by the Office of Special Education Programs, [Distribution of Proficient Scores that Exceed the 1% Cap: Four Possible Approaches](http://www.ihdi.uky.edu/msrrc/publicat.htm), explains methods used by some States to handle the situation. This paper is found at: www.ihdi.uky.edu/msrrc/publicat.htm.

In the hypothetical LEA described in H-2 there are four schools responsible for students who take alternate assessments based on alternate achievement standards.

- In school A, there are 50 proficient scores
- In school B, there are 50 proficient scores
- In school C, there are 25 proficient scores
- In school D, there are 25 proficient scores

Because more than 1.0 percent of this LEA’s students scored proficient based on alternate achievement standards, 50 of the 150 proficient scores must be counted as non-proficient at schools A, B, C, and/or D. If the State were to use a proportional method for redistributing the non-proficient scores, the outcome might look like this:

- In school A, there are 35 proficient scores, and 17 redistributed non-proficient scores
- In school B, there are 35 proficient scores, and 17 redistributed non-proficient scores
- In school C, there are 15 proficient scores, and 8 redistributed non-proficient scores
- In school D, there are 15 proficient scores, and 8 redistributed non-proficient scores

If a State exceeds the cap, it would need to follow a similar process and determine which scores to count as non-proficient among LEAs and schools that administer alternate assessments based on alternate achievement standards. The Martinez and Olsen paper explains several models for redistributing the non-proficient scores.

H-5. Which educational agency –State or local – is responsible for determining how to count proficient scores that exceed the 1.0 percent cap at the LEA level?

NCLB requires States to establish and monitor implementation of their accountability system. Within that system, LEAs are responsible for identifying schools in need of improvement and for making AYP determinations [Section 1116(a)(1)]. In practice, the educational agency that carries out this responsibility may differ depending upon how assessments are administered, scored, and analyzed. Thus, each State defines the general procedures for dealing with scores above the 1.0 percent cap at the local level and may make the LEA responsible for identifying which individual scores are to be treated as non-proficient in AYP calculations.

Ultimately, the process of counting all scores, including those that are to be included as not proficient because an LEA has exceeded the cap, should be methodical and consistent with State regulations and guidelines. The Martinez and Olsen paper (referred to in H-4) describes a few options that States and LEAs can consider when establishing this system. An LEA must follow the State’s procedures for allocating the scores among its schools. A State might identify a particular method that all LEAs must use, or a State might permit LEAs to select among several methods approved by the State.

H-6. Does the 1.0 percent cap apply only to LEAs in which the “students with disabilities” subgroup exceeds the State’s minimum group size?

No. It applies to any LEA that has at least one student with a significant cognitive disability who takes an alternate assessment aligned with alternate achievement standards. Students taking such assessments do not vanish if there is not a “students with disabilities” subgroup – these students appear in a number of other categories, such as “all students” and major/racial ethnic groups.

H-7. Do States need to amend their accountability plans in order to use alternate achievement standards?

Yes, if a State decides to assess students with the most significant cognitive disabilities based on alternate achievement standards and its accountability plan does not so indicate. A letter sent by Assistant Secretary Ray Simon to chief State school officers on February 5, 2004,

provides guidance on submitting plan amendments. It can be found at the following website: www.ed.gov/admins/lead/account/amproc.doc. If you have questions about the need to amend a State accountability plan, please contact your State's liaison in the Student Achievement and School Accountability Programs in the Office of Elementary and Secondary Education (OESE).

H-8. How will the Department monitor the implementation of this regulation?

The Department's Office of Special Education Programs (OSEP) and the Student Achievement and School Accountability Programs in OESE will coordinate their efforts to monitor State and LEA implementation of alternate achievement standards and the 1.0 percent cap. In addition, the Secretary believes that it is crucial that States closely monitor how LEAs are using alternate achievement standards and the 1.0 percent cap both generally and more specifically in the case of an LEA that receives an exception to the 1.0 percent cap.

The Department will monitor implementation of this regulation in other key ways. First, the regulation requires States to report separately the number and percentage of students taking an alternate assessment based on either grade-level achievement standards, or on alternate achievement standards, and to report the number and percentage of students taking regular assessments (including assessments taken with accommodations). Second, OESE will review these assessments and testing practices during its peer review of State standards and assessments. Third, the Department intends to issue a report on the implementation of this regulation after two years of implementation.

I. REPORTING

I-1. How will alternate assessment results based on alternate achievement standards be reported?

NCLB requires two kinds of assessment reporting – reports to parents, teachers, and principals and reports to the public.

- 1) Reports to parents, teachers, and principals: NCLB requires that a State's assessment system, including its alternate assessments, produce individual student interpretive, descriptive, and diagnostic reports that allow parents, teachers, and principals to understand and address the specific academic needs of students, and include information

regarding achievement on academic assessments based on the State's academic achievement standards. For these reports, States and LEAs should report the actual scores received by students who participate in an alternate assessment based on alternate achievement standards, even if a proficient score has been reallocated as not proficient for AYP purposes.

- 2) Public reports: NCLB also requires that States and LEAs prepare and disseminate public report cards. Two of the main sections of these public report cards are those that present (A) assessment data; and (B) accountability data.
 - A. The assessment data of public report cards include results for all students in the grades tested in the State, not just those students enrolled for a full academic year. In the assessment data section of public report cards, States and LEAs should report the actual score received by students who participate in an alternate assessment based on alternate achievement standards, even if proficient scores have been redistributed as not proficient for AYP purposes.
 - B. In the accountability section of public report cards, States and LEAs should report the student assessment scores used by the State and LEAs to determine AYP. For this section of the public report card, States and LEAs should report the scores of students taking an alternate assessment based on alternate achievement standards as redistributed after considering the 1.0 percent cap.

I-2. What other information must States and LEAs report regarding students taking alternate assessments based on alternate achievement standards?

As part of the Consolidated State Performance Report, States must annually report the following information regarding the testing of students with disabilities: For both reading/language arts and mathematics, States must report both the total number and percentage of students with disabilities who participated (1) in the regular grade-level assessment with or without accommodations; (2) in an alternate assessment based on grade-level achievement standards; and (3) in an alternate assessment based on alternate achievement standards.

I-3. What information do LEAs need to communicate to parents about the use of alternate achievement standards?

Through the IEP process, parents must be informed of the potential consequences, if any, for their child if he or she participates in an alternate assessment based on alternate achievement standards. 34 C.F.R. §200.6(a)(iii)(A)(2). For example, a parent must be informed if a State will not allow a student to graduate with a regular high school diploma if he or she takes an alternate assessment based on alternate achievement standards.

If student scores are counted as not proficient instead of proficient because the LEA or State exceeds the 1.0 percent cap, parents must receive the student's actual score. 34 C.F.R. §200.13(c)(4)(v). Further, LEAs or States are not required to tell parents that the student's score was counted differently for AYP purposes.

J. CONCLUSION: ADDITIONAL RESPONSIBILITIES WITH ALTERNATE ACHIEVEMENT STANDARDS

J-1. What additional responsibilities does a State have in connection with the use of alternate achievement standards?

The definition of alternate achievement standards is the final step in a process that includes determination of the appropriate academic content to be assessed, the development of uniform assessment materials and procedures, and standardized scoring methods. Information about the development process and related instructional materials should be disseminated by the State to support effective instruction for students with the most significant cognitive disabilities. If the State permits local development of assessments based on alternate achievement standards, it is responsible for ensuring that these assessments meet the requirements of the regulation and also the requirements for use as local assessments in 34 C.F.R. §200.3(b).

States should ensure that alternate achievement standards and alternate assessments based on these standards are implemented appropriately throughout the State. The regulation outlines the various actions that States need to take to implement these standards.

- Develop clear guidelines for IEP teams to help them determine how to assess students with disabilities;

- Provide easily understandable information to parents about how their student will be assessed;
- Provide guidance to teachers and other educators about how to include students with the most significant cognitive disabilities in the general curriculum; and
- Organize professional development for teachers and other educators on the use of accommodations and administering alternate assessments.

J-2. What additional responsibilities does an LEA have in connection with the use of alternate achievement standards?

An LEA is responsible for managing its IEP teams' decisions regarding who takes an alternate assessment based on alternate achievement standards. If an LEA does not manage the cap well, and permits schools to assess an inappropriately large number of students with an alternate assessment based on alternate achievement standards, the LEA might significantly exceed the cap. In such a situation a large number of non-proficient scores would be redistributed among the schools that administered an alternate assessment based on alternate achievement standards. This would likely create negative consequences for schools that administer an alternate assessment.

To avoid such a scenario, the LEA should fulfill its management responsibilities regarding the use of alternate assessments. First, the LEA must provide information to school personnel and IEP teams about the regular State assessment, the appropriate use of accommodations, and alternate assessments based on alternate achievement standards. State guidelines for use of alternate achievement standards should be communicated to local schools early in the school year to ensure consistency between instruction and assessment and to prevent confusion at the time of test administration. A reasonable expectation is that no more than 9 percent of students receiving special education services would be tested against alternate achievement standards, unless a school has a disproportionately high number of students with the most significant cognitive disabilities (because of special services) or is particularly small. An LEA may choose to provide individual schools with preliminary estimates of the number of students who are likely to be tested with an alternate assessment based on alternate achievement standards, based on the characteristics of the school's student population and existing State guidelines for participation. Second, the LEA should ensure that appropriate staff receive

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 be based on providing access to the most challenging curriculum possible for the individual student. Finally, the LEA should monitor implementation of alternate assessments based on alternate achievement standards in schools throughout the LEA to ensure that alternate achievement standards are being used in a manner consistent with the best instructional practices known for students with the most significant cognitive disabilities.

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