

allowing the use of alternate achievement standards for students with the most significant cognitive disabilities for the purpose of determining the AYP of States, LEAs, and schools, provided that use at the State and LEA levels did not exceed 0.5 percent of all students. Numerous comments were received on this proposal. Many of them reflected a misunderstanding on the part of commenters who thought that the number of students with disabilities who could take an alternate assessment was being limited. Instead, the NPRM proposed to allow the use of alternate achievement standards to determine proficiency for a limited group of students with disabilities, and the use of those assessment results in the calculation of AYP. It did not propose limiting the number or percentage of students taking an alternate assessment but did propose limiting the percentage of students who take an alternate assessment that is evaluated against alternate achievement standards that may be included in the calculation of AYP.

Section 200.13 as adopted in the final regulations published in the **Federal Register** (67 FR 71710) on December 2, 2002 did not allow any use of alternate achievement standards for students with the most significant cognitive disabilities for the purpose of determining the AYP of States and LEAs. Based on the comments in response to the earlier NPRM and departmental review, we are proposing to amend the final regulations to provide for this use of alternate achievement standards. We are seeking public comment in this NPRM regarding their appropriate use in determining AYP for students with the most significant cognitive disabilities.

Proposed Regulations

Section 200.1 State Responsibilities for Developing Challenging Academic Standards

Statute: Under section 1111(b)(1) of Title I, each State must adopt challenging academic content standards and student academic achievement standards (formerly called "student performance standards"). Each State must have the same academic content standards for all schools and all children in the State in mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science. In developing challenging student academic achievement standards, aligned with the State's content standards, States must describe at least

three levels of achievement: advanced, proficient, and basic.

Current Regulations: Section 200.1 describes the State's obligation to develop challenging academic content and student academic achievement standards in at least mathematics, reading/language arts, and, beginning in 2005–2006, science that apply to all public schools and public school students in the State. It requires that the State's academic achievement standards be aligned with the State's academic content standards and apply to every grade assessed.

Proposed Regulations: The proposed regulations would allow States to use a documented and validated standards-setting process to define academic achievement standards for students with the most significant cognitive disabilities, as defined in proposed § 200.1(d)(2), who take an alternate assessment. These standards must be aligned with the State's academic content standards and reflect professional judgment of the highest learning standards possible for those students.

Reasons: In proposing these amendments to § 200.1, we acknowledge that, while all children can learn challenging content standards, evaluating that learning by alternate achievement standards is appropriate for some small, limited percentage of students whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean.

Section 200.6 Inclusion of All Students

Statute: Section 1111(b)(1)(B) of the ESEA requires States to provide all public schools and all public school students in the State with the same challenging academic content standards and student academic achievement standards. Section 1111(b)(3)(C) further stipulates that a State's academic assessments must measure the achievement of all children; be aligned with the State's challenging academic content and academic achievement standards; and provide for reasonable adaptations and accommodations for students with disabilities, as defined under section 602(3) of the Individuals with Disabilities Education Act (IDEA).

Current Regulations: Current § 200.6 clarifies that the State's academic assessment system must include accommodations for students with disabilities as defined under section 602(3) of the IDEA and for students covered under section 504 of the Rehabilitation Act of 1973 (Section 504) to allow the State to measure the academic achievement of these students relative to the State's academic content

and achievement standards for the grades in which they are enrolled. In addition, the regulations require States to provide one or more alternate assessments for students with disabilities, as defined under section 602(3) of the IDEA, who cannot participate in all or part of the State assessment, even with appropriate accommodations. These alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.

Proposed Regulations: Section 200.6 would be amended to allow the alternate assessments of students with the most significant cognitive disabilities, as defined in proposed § 200.1(d)(2), to measure the achievement of those students against alternate academic achievement standards defined by the State under § 200.1(d)(1). Proposed § 200.6 would also require States to establish guidelines to ensure that alternate assessments measured against alternate achievement standards are used only for students with the most significant cognitive disabilities. States would also be required to report separately on the percentage of students with disabilities taking alternate assessments that are measured against alternate academic achievement standards and the percentage of students with disabilities taking alternate assessments that are measured against the regular achievement standards.

Reasons: Proposed amendments to § 200.6 acknowledge the appropriateness of allowing the alternate assessments of a small percentage of students—those with the most significant cognitive disabilities—to be measured against alternate achievement standards aligned with the State's academic content standards. (Alternate assessment of other students with disabilities must be measured against grade-level achievement standards.) Proper implementation of the requirements that States establish guidelines and report on the percentages of students with disabilities taking alternate assessments that are measured against alternate academic achievement standards will ensure that all students with disabilities are appropriately included in State assessment systems. The proposed amendment does not limit the number or percentage of students taking alternate assessments measured against achievement standards as defined in § 200.1(c), as determined appropriate by their Individualized Education Program (IEP) teams, but does limit the percentage of