

sources. The Metropolitan Atlanta Developmental Disabilities Surveillance Program (MADDSP) sponsored by the Centers for Disease Control (CDC) has assessed the prevalence of the moderate, severe and profound groups of mental retardation in that community at a prevalence rate of 2.9 per 1,000 for students 3 to 10 years of age, or about one-third of those with mental retardation (Boyle C, Holmgreen N, Schednel D. Prevalence of Selected Developmental Disabilities in Children 3–10 Years of Age: the Metropolitan Atlanta Developmental Disabilities Surveillance Program, 1991, MMWR Surveillance Summaries, 1996). Thus, the estimate of students is for those with an IQ of less than 50.

A later study by Roeleveld and colleagues provided a similar rate of 3.8 per 1,000 (Roeleveld N, Zielhuis GA, Gabreels F. The prevalence of mental retardation: a critical review of recent literature. *Dev Med Child Neurol*. 1997;39:125–32.). Another study indicates that students with severe to profound mental retardation are estimated at somewhat less than 0.13 percent of the total population (Beirne-Smith M, Patton J, Ittenbach R, *Mental Retardation* (6th Ed.) Upper Saddle River: Prentice-Hall Career and Technology, 2001), while 0.22 percent of the population is considered to have multiple disabilities (IDEA Annual Report to Congress, 2001). The American Association on Mental Retardation (AAMR) defines mental retardation as a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. (AAMR, *Mental Retardation: Definition, Classification, and Systems of Supports*, 10th Edition, 2002).

In general, mild mental retardation, which we are excluding from the definition of students with the most significant cognitive disabilities, is considered to be two or more standard deviations below the mean. Thus, for purposes of the Title I program, the term 'students with the most significant cognitive disabilities' is defined as covering students with intellectual functioning and adaptive behavior three or more standard deviations below the mean.

However, these numbers are generally seen as reflecting national rates, and, as a number of commenters on the earlier NPRM pointed out, may not account for more localized differences, caused by a number of factors, in the prevalence of students with the most significant cognitive disabilities. Several commenters indicated that in their

experience the prevalence of students with the most significant cognitive disabilities exceeded the 0.5 percent proposal and suggested that a limit of 1.0 percent would be more appropriate.

While not specifically comparable, because they include all students with disabilities who participate in State assessment programs through alternate assessments, and not just those students with the most significant cognitive disabilities, State data reported to the Department under the IDEA may be illustrative. Of the 38 States for which sufficient data were provided to calculate a participation rate, in 21 States 5 percent or less of students with disabilities who participated in the State assessment program took an alternate assessment. (Five percent of students with disabilities is roughly equivalent to 0.5 percent of all students.) In 14 other States, between 5 and 10 percent of students with disabilities participated in State assessment programs through an alternate assessment. (Analysis of 2000–2001–Biennial Performance Reports, National Center for Educational Outcomes) In these States, students with disabilities comprise approximately 8 to 12 percent of the total student population. (IDEA Annual Report to Congress, 2001).

In addition, national prevalence rates provide an average, but the actual numbers in a jurisdiction may be higher or lower than that average. Factors beyond the control of a school, school district, or even a State may cause the number of students with the most significant cognitive disabilities to exceed 0.5 percent of the total student population at the grades assessed. For example, in small schools, a single student may be more than that limit would allow. Moreover, certain schools, districts, or States may have disproportionate numbers of students with the most significant cognitive disabilities because of proximity to special facilities or services.

In addition, imposing a limit on the number and type of students with disabilities who can take an alternate assessment that is evaluated based on alternate academic achievement standards does not prohibit other students with disabilities from taking an alternate assessment or an assessment with appropriate accommodations when deemed necessary by the Individualized Education Program (IEP) team under the IDEA. Decisions about how an individual student participates in a State assessment remain the responsibility of the student's IEP team and must be made on an individualized basis for each student. However, only the alternate assessment of students

with the most significant cognitive disabilities may be evaluated against alternate academic achievement standards.

In sum, even though the 0.5 percent figure was based on the best available data, those data are limited. We are persuaded by the comments of a number of stakeholders who said that 0.5 percent did not reflect their experience; rather, a one percent limitation would allow for normal State and LEA variations in the occurrence of students with the most significant cognitive disabilities.

#### **Executive Order 12866**

##### *1. Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of the governmental functions.

##### *Summary of Potential Costs and Benefits*

These proposed regulations would not add significantly to the costs of implementing the Title I programs authorized by the ESEA or alter the benefits that the Secretary believes will be obtained through successful implementation.

As noted elsewhere, the proposed regulations would clarify the statute and facilitate a better understanding of its accountability requirements regarding students with the most significant cognitive disabilities. Both the statute and existing regulations require States to develop assessment systems that include alternate assessments. These proposed regulations clarify how alternate assessment results based on alternate achievement standards for a small percentage of students are to be included in the calculation of AYP within the State accountability system.