

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810-AA95

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the programs administered under title I, part A, of the Elementary and Secondary Education Act of 1965 (ESEA). These regulations are needed to implement statutory provisions regarding State, local educational agency (LEA), and school accountability for the academic achievement of students with the most significant cognitive disabilities and are needed to implement changes to title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act).

DATES: These regulations are effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Jackson, Ed.D. Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB-6, Washington, DC 20202-6132. Telephone: (202) 260-0826.

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SUPPLEMENTARY INFORMATION: These regulations implement statutory provisions of title I of the ESEA, as amended by the NCLB Act (Pub. L. 107-110), enacted January 8, 2002. On March 20, 2003, the Secretary published a notice of proposed rulemaking (NPRM) for title I programs in the **Federal Register** (68 FR 13796). The NPRM proposed allowing States to adopt alternate achievement standards for children with the most significant cognitive disabilities and include assessment scores based on those standards in title I adequate yearly progress (AYP) calculations.

Background*Including Children With Disabilities in State Assessment Programs*

The Individuals with Disabilities Education Act (IDEA), section 504 of the Rehabilitation Act of 1973, and title I require inclusion of all students with disabilities in the State assessment system. Title I further requires that the assessment results for all students (and all students with disabilities, among other groups) 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 a district for a full academic year be used in calculating AYP for the district and the State. System accountability should be just that—accountability for everyone in the system. Students with disabilities are a part of the student body. Most of these students spend the majority of their time in general education classrooms, and receive instruction from regular classroom teachers. Regardless of where students receive instruction, all students with disabilities should have access to, participate in, and make progress in, the general curriculum. Thus, all students with disabilities must be included in the measurement of AYP toward meeting the State's standards.

Several critical elements in title I as amended by the NCLB Act ensure that schools are held accountable for educational results, so that the best education possible is provided to each and every student. Three critical elements—academic content standards, academic achievement standards, and assessments aligned to those standards—provide the foundation for an accountability system ensuring that students with disabilities reach high standards. State assessments are the 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 these regulations permit States to measure the achievement of students with the most significant cognitive disabilities based on alternate achievement standards.

Only by including all students in accountability measures will certain unintended negative consequences be avoided. For example, we know from research that when students with disabilities are allowed to be excluded from school accountability measures, the rates of referral of students for special education increase dramatically. (See National Center for Educational Outcomes Synthesis 26: <http://education.umn.edu/nceo/OnlinePubs/>

Synthesis26.html.) In addition, students with disabilities accrue positive benefits when they are included in school accountability systems. Educators realize that these students also count, just like all other students; they understand that they need to make sure that these students learn to high levels, just like other students. When students with disabilities are part of the accountability system, educators' expectations for these students are more likely to increase.

One State explains the instructional benefits of including students with the most significant cognitive disabilities in its assessment: "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*. <http://www.doe.mass.edu/mcas/atil/QabdC.doc>. September 22, 2003).

Too often in the past, students with disabilities were excluded from assessments and accountability systems, and the consequence was that they did not receive the academic attention they deserved. Access and exposure to the general curriculum for students with disabilities often did not occur, and there was no systemwide measure to indicate whether or what they were learning. These regulations are designed to ensure that schools are held accountable for the educational progress of students with the most significant cognitive disabilities, just as schools are held accountable for the educational results of all other students with disabilities and students without disabilities.

Regulatory Development

In a notice of proposed rule making (NPRM) published in the **Federal Register** (67 FR 50986) on August 6, 2002, the Secretary proposed a regulation to allow States to develop and use 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 the number of proficient scores based on the alternate achievement standards included in AYP calculations, at the