

State and LEA levels separately, did not exceed 0.5 percent of all students in the grades assessed. However, because the comments indicated significant misunderstanding of the proposed rule, § 200.13 of title 34 of the Code of Federal Regulations, 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.

In an NPRM printed in the **Federal Register** on March 20, 2003, the Secretary again proposed to amend the title I regulations 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. In the new NPRM, the Secretary proposed that the number of proficient and advanced scores based on alternate achievement standards included in AYP calculations at the State and LEA levels, separately, could not exceed 1.0 percent of all students in the grades assessed at the State and the LEA levels, respectively. One percent of all students is approximately 9.0 percent of students with disabilities.

The March 20, 2003, NPRM included additional explanatory information on the purpose and intent of the proposed regulations. However, the comments on this NPRM, like those received on the August 6, 2002, NPRM, indicated that there continued to be misunderstandings about alternate assessments, alternate achievement standards, and the intent and purpose of the proposed regulations. Many commenters continued to think that the number of students with disabilities who could take an alternate assessment was being limited. The NPRM did not propose limiting the number or percentage of students who take an alternate assessment; rather, it proposed to limit the number of proficient and advanced scores based on alternate achievement standards that may be counted in the calculation of AYP.

Being mindful of timing issues related to these proposed regulations, the submission of State accountability plans, and State efforts to develop assessments that better measure the progress of students with disabilities toward meeting State standards, as well as the fact that some States already had administered out-of-level assessments (instructional level assessments) in the 2002–2003 school year, the Secretary used his transitional authority to afford States flexibility in making AYP determinations, based on data from

assessments administered during the 2002–2003 school year. Under that transition policy, a State, in calculating AYP for schools and districts, could use alternate achievement standards for students with the most significant cognitive disabilities (subject to a 1.0 percent cap) and also could use results from out-of-level assessments (instructional level assessments). The Department communicated this transition policy to States through the State accountability system approval process as well as in a letter to each State. (See <http://www.ed.gov/policy/spced/guid/secletter/030627.html>.)

Key Concepts

The following paragraphs clarify the Department's understanding of several critical issues related to these regulations. They are: (1) Alternate assessments; (2) out-of-level assessments; and (3) the 1.0 percent cap.

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 State assessment, even with appropriate accommodations. An alternate assessment may include materials collected under several circumstances, including (1) teacher observation of the student, (2) samples of student work produced during regular classroom instruction that demonstrate mastery of specific instructional strategies in place of performance on a computer-scored multiple-choice test covering the same content and skills, or (3) standardized performance tasks produced in an “on-demand” setting, such as completion of an assigned task on test day. To serve the purposes of 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.

As part of the State assessment program, alternate assessments should have a clearly defined structure, guidelines for which students may participate, clearly defined scoring criteria and procedures, and a report format that clearly communicates student performance in terms of the academic achievement standards defined by the State. The requirements for high technical quality set forth in §§ 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.

Alternate assessments may be needed for students who have a broad variety of disabling conditions; consequently, a State may employ more than one alternate assessment. An alternate assessment may be scored against grade-level standards, or, in the case of students with the most significant cognitive disabilities, against alternate achievement standards. Therefore, all students taking an alternate assessment are included in calculations of AYP as either proficient (and above) or non-proficient.

An alternate achievement standard is an expectation of performance that differs in complexity from a grade-level achievement standard. These regulations clarify that a State is permitted to use alternate achievement standards to evaluate the performance of students with the most significant cognitive disabilities and to give equal weight to proficient and advanced performance based on the alternate standards in calculating school, district, and State AYP, provided that the number of proficient and advanced scores based on the alternate achievement standards does not exceed 1.0 percent of all students in the grades tested at the State or LEA level. The Secretary may approve an exception for a specified period of time for a State (or a State may approve a higher limit for an LEA.)

If a State chooses to create alternate achievement standards, the State is not limited to setting a single alternate achievement standard. If, however, the 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 it must include in the 1.0 percent cap proficient scores resulting from all assessments based on alternate achievement standards.

Although the 1.0 percent cap is applied to the number of proficient and advanced scores that may be included in AYP determinations, rather than the number of students taking an assessment against alternate achievement standards, this regulation clarifies the Department's position that alternate achievement standards are acceptable only for the small number of students with the most significant cognitive disabilities. In consideration of schools that, for example, are small