

schools or provide special services to students with the most significant cognitive disabilities, the numerical cap of 1.0 percent does not apply at the school level. This does not mean, however, that the use of alternate assessments aligned with alternate standards is unlimited at the school level. For most schools, only a small portion of students with disabilities—those with the most significant cognitive disabilities—should appropriately participate in an assessment based on alternate achievement standards, and all other students with disabilities should be assessed against grade-level standards. In general, the Department expects that no more than 9.0 percent of students with disabilities will participate in an assessment based on alternate achievement standards.

The Department expects most students with disabilities to participate in the regular statewide assessment either without accommodations or with appropriate accommodations that are consistent with the accommodations provided during regular instruction. Current § 200.6 requires that the IEP team determine the accommodations necessary to measure the academic achievement of students with disabilities relative to the State's academic content and achievement standards for the grade in which the student is enrolled. Through the IEP process, parents should be informed of the potential consequences, if any, for their child if he or she participates in a regular assessment with particular accommodations, an alternate assessment based on grade-level achievement standards, or an alternate assessment based on alternate achievement standards. (For example, a parent should be informed if a State will not allow a student to graduate with a regular diploma if he or she takes an alternate assessment based on alternate achievement standards.)

Out-of-Level Assessments

In order to improve instruction and achievement for all students with disabilities, the Department expects States to assess as many students as possible with academic assessments aligned to regular achievement standards. To achieve that goal and reduce use of out-of-level assessments, States should work to implement fully the IDEA Amendments of 1997, provide students access to the general curriculum, develop universally designed assessments that measure whether students with disabilities are meeting the State's challenging academic standards, and ensure that both special and regular education

teachers set high expectations for students with disabilities and understand the State's academic content standards. The alternate achievement standards associated with an out-of-level assessment used for calculating AYP must meet the requirements of § 200.1(d) and students taking such assessments must be included in AYP calculations. The achievement standards associated with out-of-level assessments may meet the alternate achievement standards under § 200.1(d), only if they are aligned with the State's academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest achievement standards possible. The results from those tests 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 achievement standards in the target grade.

Previous guidance from the Department's Office of Special Education Programs indicated that out-of-level assessments were not alternate assessments. 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 § 200.1(d) may be considered to be alternate assessments aligned with alternate achievement standards for the purposes of calculating AYP.

1.0 Percent Cap

Alternate achievement standards are appropriate only for students with the most significant cognitive disabilities. The intent of the March 20, 2003, NPRM was not to create a separate category of disability and these regulations do not do so; rather, the intent was to provide for a narrow population of children with disabilities whose proficient and advanced scores based on alternate achievement standards may be included in AYP calculations. Although some commenters argued that no limit should be imposed on the use of scores based on alternate achievement standards in calculating AYP, the Secretary has determined that a cap is warranted both to protect the interests of individual students (by providing an incentive for schools to provide maximum learning opportunities to each student) and to protect the meaningful interpretation and use of State assessment results for determining school, district, and State AYP. This will ensure that States, LEAs, and schools are held accountable for the

academic progress of these students and that students with the most significant cognitive disabilities are assigned to a curriculum that is appropriately challenging.

The Secretary welcomes comments and data from States and others about how the regulations are working over time and may consider revising them in the future should the comments indicate a need to do so. In addition, the Department intends to issue a report on the implementation of this regulation after two years of implementation. As data and research on assessing students with disabilities improve, the Department may decide to issue regulations or guidance on other related issues in the future.

Significant Changes From the March 20, 2003, NPRM

Section 200.1 of NPRM proposed defining "students with the most significant cognitive disabilities" as students with disabilities under the IDEA whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean. The regulations remove this definition, thereby giving States greater flexibility in applying the provisions for including a limited number of proficient and advanced scores based on alternate achievement standards in calculating AYP.

At the same time, as described in the discussion of comments related to § 200.6, the regulations require States to implement a number of important safeguards to ensure that this flexibility will be used in an appropriate manner.

Section 200.6 of the NPRM proposed allowing States to measure the achievement of students with the most significant cognitive disabilities against alternate achievement standards. In doing so, it proposed requiring States to establish guidelines ensuring that only students with the most significant cognitive disabilities are tested against alternate standards including establishing clear policies for determining when alternate achievement standards may be used. The regulations retain these provisions while clarifying that a State is not required to use alternate achievement standards. If it does, the regulations establish these additional conditions associated with their use: The State must ensure that parents are informed their children will be assessed based on alternate achievement standards, and the State must report on the number and percentage of students with disabilities taking regular assessments (with or without accommodations), alternate assessments based on grade-level