

(3) Regular assessments, including those administered with appropriate accommodations.

(C) Document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum and in assessments aligned with that curriculum;

(D) Develop, disseminate information on, and promote use of appropriate accommodations to increase the number of students with the most significant cognitive disabilities who are tested against grade-level academic achievement standards; and

(E) Ensure that regular and special education teachers and other appropriate staff know how to administer assessments, including making appropriate use of accommodations, for students with the most significant cognitive disabilities.

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■ 4. In § 200.13, revise the introductory text of paragraph (b) and paragraph (b)(1), redesignate paragraph (c) as paragraph (d), and add new paragraph (c) to read as follows:

200.13 Adequate yearly progress in general.

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(b) A State must define adequate yearly progress, in accordance with §§ 200.14 through 200.20, in a manner that—

(1) Applies the same high standards of academic achievement to all public school students in the State, except as provided in paragraph (c) of this section;

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(c)(1) In calculating adequate yearly progress for schools, LEAs, and the State, a State—

(i) Must, consistent with § 200.7(a), include the scores of all students with disabilities, even those with the most significant cognitive disabilities; but

(ii) May include the proficient and advanced scores of students with the most significant cognitive disabilities based on the alternate academic achievement standards in § 200.1(d), provided that the number of those students who score at the proficient or advanced level on those alternate achievement standards at the LEA and at the State levels, separately, does not exceed 1.0 percent of all students in the grades assessed in reading/language arts and in mathematics.

(2) An SEA may request from the Secretary an exception permitting it to exceed the 1.0 percent cap. The Secretary will consider granting, for a specified period of time, an exception to

a State if the following conditions are met:

(i) The SEA documents that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the grades assessed.

(ii) The SEA explains why the incidence of such students exceeds 1.0 percent of all students in the combined grades assessed, such as school, community, or health programs in the State that have drawn large numbers of families of students with the most significant cognitive disabilities, or such a small overall student population that it would take only a very few students with such disabilities to exceed the 1.0 percent cap.

(iii) The SEA documents that it is fully and effectively addressing the requirements of § 200.6(a)(2)(iii).

(3)(i) A State may grant an exception to an LEA permitting it to exceed the 1.0 percent cap in paragraph (c)(1) of this section only if the State evaluates the LEA's request using conditions consistent with paragraph (c)(2) of this section.

(ii) The State must review regularly whether an LEA's exception to the 1.0 percent cap is still warranted.

(4) In calculating adequate yearly progress, if the percentage of proficient and advanced scores based on alternate academic achievement standards under § 200.1(d) exceeds the caps in paragraph (c)(1) through (3) of this section at the State or LEA level, the State must do the following:

(i) Consistent with § 200.7(a), include all scores of students with the most significant cognitive disabilities.

(ii) Count as non-proficient the proficient and advanced scores above the caps in paragraph (c)(1) through (3) of this section.

(iii) Determine which proficient scores to count as non-proficient in schools and LEAs responsible for students who take an alternate assessment based on alternate achievement standards.

(iv) Include those non-proficient scores in each applicable subgroup at the school, LEA and State level.

(v) Ensure that parents are informed of the actual academic achievement levels of their students with the most significant cognitive disabilities.

Appendix—Analysis of Comments and Changes

Note: The following appendix will not appear in the Code of Federal Regulations.

Section 200.1 State Responsibilities for Developing Challenging Academic Standards

Comment: Several commenters noted that proposed language requiring “a documented and validated standards-setting process [to] define achievement standards that * * * reflect professional judgment of the highest learning standards possible for those students” seems to be more rigorous than the process required for general assessments.

Discussion: Title I, as amended by the NCLB Act, requires that, for the general assessment, States establish challenging academic content standards that contain rigorous content and encourage the teaching of advanced skills, and challenging student achievement standards that determine how well students are mastering this content. States must create the achievement standards with all students in mind, so that they are realistic for a wide variety of individuals. The standards should represent a consensus among experienced teachers, parents, and other appropriate individuals regarding the performance expected after appropriate student effort in a challenging instructional program. In addition, the law calls for all schools and districts to attain the long-range goal of all students becoming proficient by 2013–14, thereby eliminating existing achievement gaps. For a school, the challenge is to enable all students to meet this achievement standard.

Students with the most significant cognitive disabilities who participate in an alternate assessment are entitled to the same deliberate approach to defining achievement standards that represent a rigorous but realistic challenge for this heterogeneous group of students and a challenging long-range goal for their school and district. The use of “highest learning standards possible” is intended to reflect that the alternate achievement standards should be no less challenging for students with the most significant cognitive disabilities than the standards set for all other students.

Change: None, except that we have deleted the phrase, “for those students,” as it was redundant.

Comment: Some commenters expressed confusion regarding the need for achievement standards that are aligned with the State's academic content standards. They questioned what it means for alternate achievement standards to be aligned with the content standards when children with the most significant cognitive disabilities are not working on the same content as their peers.

Discussion: Alternate achievement standards must be aligned with the State's academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest learning standards possible for the group of students with the most significant cognitive disabilities. In practice, alignment with the State's academic content standards means that the State has defined clearly the connection between the instructional content appropriate for non-disabled students and the related knowledge and skills that may serve as the basis for a definition of proficient achievement for students with the most significant cognitive disabilities. One State,