

for example, has developed a curriculum framework for students with the most significant cognitive disabilities that moves from grade-level expectations to progressively less complex versions of the standard. This continuum of "entry points" provides a range of options at which a student with disabilities can access the content at an appropriately challenging level. It lists, for example, the following skills for grade 3 through 4 content standards under Mathematics Operations: "Select, use and explain various meanings and models of multiplication and the division of whole numbers. Understand and use the inverse relationship between the two operations." The State's standards document also identifies the essence of the standard in several brief statements, *e.g.*, understand the meaning of multiplication and division; and represent multiplication and division problems concretely. The State then provides several illustrations of the knowledge and skills appropriate for use in the alternate assessment. These range from less complex, "Illustrate the concept of multiplication using groups of objects," to more complex knowledge that approaches grade-level expectations such as "Identify the commutative property of addition and multiplication using number sentences ( $3 \times 5 = 5 \times 3$ )."  
See <http://www.doe.mass.edu/mcas/alt/rg/math.doc>.

The alternate achievement standards may include prerequisite or enabling skills that are part of a continuum of skills that culminate in grade-level proficiency. The use of alternate achievement standards, however, must not result in inappropriate placements or assignment of students to a curriculum that does not include academic content.

*Change:* None.

*Comment:* One commenter recommended that § 200.1 be revised to require States to develop alternate achievement standards rather than making this authority permissive.

*Discussion:* Section 1111(b)(1) of title I requires a State to adopt challenging student achievement standards and to apply the same standards "to all schools and children in the State." The Secretary acknowledges, however, that, while *all* children can learn challenging content, evaluating that learning through alternate achievement standards is appropriate for a small, limited percentage of students who are within one or more of the existing categories of disability, and whose cognitive impairments may prevent them from attaining grade-level achievement standards. Therefore, these regulations permit States to measure the achievement of a limited percentage of students—those with the most significant cognitive disabilities—against challenging but alternate achievement standards. Based on the statutory language, the Secretary does not have the authority to *require* a State to adopt alternate achievement standards. The Secretary's interest, however, is in ensuring that if a State adopts such standards, they are rigorous and used only for those students for whom they are appropriate.

*Change:* None.

*Comment:* Two commenters indicated a desire for flexibility that would permit individual students to show progress based

on IEP goals rather than performance against an additional set of standards.

*Discussion:* IEP goals address a broad range of individualized instructional needs as well as behavioral and developmental goals. Title I, as amended by the NCLB Act requires that schools be accountable for student achievement only in the content areas of reading/language arts and mathematics and requires assessment of all students in these essential skill areas. To the maximum extent possible, the IEP should provide for student access to, and participation and progress in, the general curriculum. Students with the most significant cognitive disabilities can address many of their IEP goals using materials and activities that are related to the State's reading/language arts and mathematics standards. To ensure that schools are accountable for this group of students, they must be included in the assessment and accountability systems. In order to make confident accountability determinations for schools based on student achievement, including the achievement of students with the most significant cognitive disabilities, alternate achievement standards must ensure consistency in the judgments made about the schools rather than relying on measures that do not permit consistent judgments using comparable measures of achievement across all students. In addition to reporting student successes relative to the achievement standard, well-designed assessments will also show student progress over time.

*Change:* None.

*Comment:* Many commenters objected to proposed § 200.1(d)(2) that would define "students with the most significant cognitive disabilities" as those "who have been identified as students with disabilities under IDEA and whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean." Some commenters objected to the definition's implicit reliance on IQ test scores. Others expressed concern that the definition is inconsistent with the 1.0 percent cap.

*Discussion:* The Secretary agrees with the commenters on both issues. He is concerned that the proposed definition would have placed unwarranted reliance on an IQ test to determine three standard deviations below the mean. Moreover, he acknowledges that it was inconsistent to set a 1.0 percent cap while defining students with the most significant cognitive disabilities as those three standard deviations below the mean. A student may be appropriately assessed on the basis of alternate achievement standards even if the child's intellectual functioning and adaptive behavior are fewer than three standard deviations from the mean. The definition in the NPRM thus restricted the use of alternate achievement standards to a more narrowly defined group of students than many educators feel appropriate based on their professional experience. As a result, the Secretary is removing the proposed definition. Removing the definition while maintaining the 1.0 percent cap gives States and LEAs more latitude in identifying the population that should appropriately be evaluated against alternate achievement standards, while ensuring that alternate

achievement standards are not used as a loophole to evade accountability for unwarrantedly large numbers of students with disabilities. At the same time, the Secretary believes there are other safeguards that States adopting alternate achievement standards should establish to ensure that the flexibility to use alternate achievement standards for a small population of students with disabilities is exercised appropriately and is not abused.

*Change:* The definition in proposed § 200.1(d)(2) is removed from the final regulations. New provisions have been added in § 200.6(a)(2)(iii) (C), (D), and (E) requiring States that are using alternate achievement standards to: (1) Document that students with the most significant cognitive disabilities are included in the general curriculum to the extent possible and are participating in assessments aligned with that curriculum; (2) develop, disseminate information on, and promote the use of appropriate accommodations; (3) ensure that regular and special education teachers and other appropriate staff know how to administer assessments to students with the most significant cognitive disabilities; and (4) ensure that parents are informed that their child is going to be measured against alternate achievement standards.

*Comment:* Several commenters indicated concern that, because the term "students with the most significant cognitive disabilities" introduces new terminology, it suggests a new category of disability.

*Discussion:* The intent of the March 20, 2003, NPRM was not to create a new category of disability. Rather, the Secretary intended the term "students with the most significant cognitive disabilities" to include that small number of students, who are (1) within one or more of the 13 existing categories of disability (*e.g.* autism, multiple disabilities, traumatic brain injury, *etc.*), and (2) whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction.

*Change:* None.

*Comment:* Several commenters expressed concern that the 1.0 percent cap would unnecessarily limit access of some students with disabilities to alternate assessments.

*Discussion:* The intent of the NPRM was not to restrict students with disabilities from taking alternate assessments when that is appropriate. The NPRM and this regulation only address the inclusion of scores for AYP calculations. The intent was to provide for a narrow population of children with disabilities whose achievement on alternate assessments is more appropriately measured by alternate achievement standards. The regulations permit the proficient and advanced scores of those students (limited to 1.0 percent of the total population of students in the grades assessed for States and LEAs) to be included in the calculation of AYP, even though their proficient and advanced scores are based on alternate standards. The Secretary developed this policy to ensure that States, LEAs, and schools are held accountable for the progress of *all* students and that students with disabilities—particularly students with the most