

significant cognitive disabilities—are not inappropriately assigned to a curriculum that is not appropriately challenging in order to avoid accountability consequences.

Change: None.

Comment: Some commenters indicated that the proposed regulations would require new recordkeeping for students with the most significant cognitive disabilities.

Discussion: By eliminating the proposed definition of students with the most significant cognitive disabilities, these regulations should alleviate the concerns of commenters who were worried about the need for additional documentation of individual students' disabling characteristics. The regulations, however, will require States to report separately on the number and percentage of students taking an alternate assessment based on either grade-level achievement standards, or on alternate achievement standards as well as taking regular assessments (including with accommodations). States are already collecting and reporting on the numbers of students with disabilities taking regular assessments and alternate assessments as a part of performance reporting under the IDEA as well as reporting the results under title I and IDEA. Requiring States to report separately on the number of students taking alternate assessments measured against alternate and regular achievement standards is necessary to ensure that alternate achievement standards are being used consistent with the limitation imposed by these regulations.

Change: The regulations have been amended to require that States report on the number (in addition to percentage) of students with disabilities taking alternate assessments measured against regular and alternate achievement standards, and the number and percentage of students with disabilities taking regular assessments.

Comment: One commenter suggested that some students should be assessed using an alternate assessment based on the same standards as all other students.

Discussion: An important purpose for alternate assessments in State assessment systems is to increase the capacity of large-scale accountability systems to create information about how a school, district, or State is doing in terms of overall student performance. As States have gained experience in developing assessment strategies for students with disabilities, it has become apparent that there can be several kinds of alternate assessments. These may include different strategies for gathering information about what students know and can do; for example, (1) teacher observation of the student, (2) collecting and scoring samples of student work produced during regular classroom instruction that demonstrates mastery of specific instructional strategies, in place of performance on a computer scored multiple choice test covering the same content and skills, or (3) student work produced in an "on-demand" setting such as completion of an assigned task on test day. Such variations are permissible under title I as long as the State can to document that the results provide evidence of student knowledge and

skills that is comparable to the evidence provided by results from the regular standards-based State assessment.

For a very small group of students with the most significant cognitive disabilities, alternate achievement standards are appropriate. These alternate achievement standards must reflect a set of expectations for students with the most significant cognitive disabilities consistent with the State content standards in reading/language arts and mathematics.

Change: None.

Section 200.6 Inclusion of All Students

Comment: Several commenters suggested that the proposed regulation conflicted with the role of the IEP team in determining how students with disabilities are assessed. Specifically, commenters indicated that it is the responsibility of the IEP team to decide which assessment students with disabilities take and whether students with disabilities take an assessment based on alternate achievement standards. Another commenter recommended that the IEP team develop the alternate assessments.

Discussion: Under the IDEA, a student's IEP team is responsible for determining how that student participates in a State assessment of student achievement. The IEP team is charged with determining whether accommodations for the assessments required under title I are needed by each individual student to enable the student to participate in the assessment. If the IEP team determines that a student will not participate in the regular assessment (or part thereof), the team is required to identify why the assessment is not appropriate for the child and how the child will be assessed, such as through an alternate assessment. IEP teams, however, do not have complete discretion regarding the assessment of students with disabilities. The team decides how a student participates, not whether the student participates in the assessment at all.

For State assessment programs under title I, the State is responsible for establishing the State academic content and achievement standards against which all children in the State will be assessed, including all students with disabilities. In addition, under title I the State is responsible for implementing a system of high-quality, yearly student academic assessments that are aligned with the State's academic content standards, are valid and reliable for the purposes for which they are used, and are consistent with relevant, nationally recognized professional and technical standards. Under the IDEA, the State also is responsible for developing guidelines for the participation of students with disabilities in alternate assessments for those students who cannot participate in the regular State assessments. Thus, for assessments under title I, the IEP team operates in an environment in which the academic content and achievement standards and assessments are set by the State, the technical qualities of the State assessments are well established, (including whether accommodations are valid and do not invalidate test results on all or part of the assessment), and the State has guidelines regarding eligibility for alternate assessments.

Change: None.

Comment: One commenter suggested that the alternate assessment requirement be delayed until 2007–08 to give States time to develop alternate assessments.

Discussion: States have received ample notification of this requirement and should now have alternate assessments in place. Under IDEA, States were required to implement an alternate assessment as of July 1, 2000. The Office of Elementary and Secondary Education notified States in spring 2000 that title I requires that all students with disabilities be included in State assessments, either with accommodations or in an alternate assessment as determined by their IEP team. Further, whatever assessment approach is taken, the scores of students with disabilities must be included in the assessment system for purposes of public reporting and school and district accountability.

Change: None.

Comment: One commenter proposed that alternate assessments include functional life skills in addition to academic content.

Discussion: The purpose of alternate assessments under title I is to measure the progress of schools in increasing the percentage of students who reach or exceed the proficient level on State academic performance standards. While States and LEAs have the authority to develop assessments that measure the acquisition of functional life skills, such assessments are not required by title I and are beyond the scope of these regulations.

Change: None.

Comment: Several commenters requested that the regulation permit the use of out-of-level assessments, although they disagreed about whether out-of-level assessments should be considered as an assessment based on alternate achievement standards or as another form of assessment for which additional flexibility should be permitted.

Discussion: The NCLB Act is based on the premise that holding States, LEAs and schools to high expectations for the learning of all students can significantly improve the educational attainment of all students. Although these regulations recognize that there is a small population of students with disabilities who may not achieve grade-level proficiency, we expect, and State experience indicates, that other students with disabilities can achieve when they are held to high expectations, provided full access to the general curriculum, and taught by teachers highly qualified in the core academic subjects that they teach. Under these regulations, out-of-level assessments are considered to be alternate assessments based on alternate achievement standards to which the cap in § 200.13(c) applies if they are based on alternate achievement standards that meet the requirements of § 200.1(d). If the out-of-level assessment does not meet those requirements, it is not an alternate assessment measuring alternate achievement standards.

Change: None.

Section 200.13 Adequate Yearly Progress in General

Comment: Numerous comments were received on the proposed cap on the