

NCLB Regulations for Alternate Achievement Standards (1%)

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In December of 2003, the United States Education Department (USED) released regulations authorizing the development of alternate achievement standards and their use for making AYP decisions for students with the most significant cognitive disabilities (34 C.F.R. Part 200). Since the 2001 reauthorization of the Elementary and Secondary Education Act of 1965, commonly known as No Child Left Behind (NCLB), all states are responsible for including all students in public school in the statewide accountability system accountable for the achievement of all students and individual subgroups. Non-regulatory guidance to assist states in implementing the alternate achievement standards regulations was released in August of 2005.

Inclusion of students with disabilities (SWD) in statewide accountability systems has been mandated since the 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA). The IDEA Amendments states, “children with disabilities must be included in general state and district-wide assessment programs, with appropriate accommodations, where necessary.” Where accommodations alone could not make these assessments accessible, the amendment requires that the agencies develop additional assessments so that every child will be included in the accountability programs. IDEA is primarily responsible for widespread development and implementation of alternate assessments; however, when states became responsible for the achievement of SWD under NCLB, the attention focused on those assessments greatly increased. NCLB contains additional mandates requiring that all students are provided access to and assessed against the state curriculum, although the complexity can be reduced for SWD. As a result, many states that implemented alternate assessments in response to IDEA 1997 had to re-design their assessments to reflect a curricular focus.

The alternate achievement standards legislation includes requirements for identifying the students for whom alternate standards are appropriate. USED refers to this population as the most significantly cognitively disabled (MSCD) students. According to the regulations, these students should be identified within one or more of the existing IDEA categories and have a cognitive impairment preventing them from attaining grade-level achievement standards, even with the very best instruction. States are responsible for defining MSCD and establishing guidelines for IEP (Individualized Education Program) teams to use in assigning students to assessments, holding them to alternate achievement standards.

An important difference between the proposed and final regulations is the removal of the definition of MSCD as those students whose intellectual functioning and adaptive behavior is three or more standard deviations below the mean. This was done to provide states greater flexibility in defining the population for these alternate assessments and to reflect changes in the disability research community, which was moving away from definitions based on assessment performance relative to the mean. The 2004 reauthorization of IDEA was specifically re-written to remove the “significant discrepancy” formula based on IQ and similar measures. It requires that states be

permitted to adopt alternative models for IDEA identification, including response-to-intervention (RTI). Within IDEA 2004, RTI is particularly used in reference to identifying students with learning disabilities (LD).

In order to prevent the over-identification of students as MSCD for the purposes of assessment, USED put parameters around the definition and on the numbers of students who could be counted as proficient in a state's average yearly progress calculations for NCLB. USED expects approximately nine percent of students with disabilities to fall into the MSCD category. Students counted as proficient against alternate achievement standards cannot exceed one percent of the total population of students tested in the state, by grade and subject, although exceptions can be granted by the feds for state level reporting and by state for local education agencies LEAs. As a result of these requirements, students participating in the alternate assessment for alternate achievement standards are often referred to as the "1% population," and the assessments as the "1% tests."

As determined by IEP teams, students with MSCD can be assessed by the most appropriate of the following options: grade-level state assessment, a grade-level state assessment with accommodations, an alternate assessment aligned with grade-level content standards, or an alternate assessment based on alternate achievement standards. The alternate assessment based on alternate achievement standards carries the burden of the one percent cap on students counted as proficient in states' average yearly progress calculations. According to the regulations, these alternate assessments may contain a narrower range of content and simpler questions. Less complex mastery is expected, but the test content must be challenging for MSCD. Officially, the assessments may be out-of-level, but it is very difficult to satisfy the criteria using an out-of-level test. The guidance specifically states that assessments for MSCD students should not focus on functional or Individualized Educational Programs (IEP) goals, although IEP goals that reference the content standards may be assessed. As with the grade-level assessments, separate results are required for reading/language arts, math, and science, and the assessments must meet the requirements for technical adequacy.

States may create more than one alternate assessment and may define multiple alternate achievement standards using commonly accepted professional practices. However, if multiple standards are defined, the relationships between them must be clearly articulated. The USED's goal in creating these regulations was to ensure that all students are appropriately included in accountability systems, and to ensure schools and local education agencies receive credit for their achievement. All 50 states responded to the alternate achievement standard's flexibility by creating alternate assessments. However, most states had difficulty with their alternate assessments during federal peer review. As of April 19, 2007, only 18 states have successfully passed peer review and all those that have not are, at least in part, being held up by their alternate assessments.