



## **Analysis of ED's 1% Rule for Students with the Most Significant Cognitive Disabilities**

The U.S. Department of Education's (ED's) Office of Elementary and Secondary Education has released long-awaited final regulations that will allow states to assess a limited number of students with the most significant cognitive disabilities against different academic standards than their peers. These regulations implement changes under the No Child Left Behind Act of 2001 (NCLB) that governs programs administered under Title I, Part A of the Elementary and Secondary Education Act (ESEA). The new regulations take effect on January 8, 2004.

The final rule establishes a one percent cap on the number of proficient and advanced scores of students with the most significant cognitive disabilities who take alternate assessments based on alternate achievement standards that may be counted in the calculation of adequate yearly progress (AYP). That is, states and school districts have the flexibility to count the "proficient" and "advanced" scores of students with the most significant cognitive disabilities who take alternate assessments based on alternate achievement standards—as long as the number of those proficient and advanced scores does not exceed one percent of all students in the grades tested (nationally about nine percent of students with disabilities). Without this flexibility, those scores would have to be assessed against grade-level standards and would be considered "not proficient." A number of school districts across the country have reportedly failed to make AYP solely because of special education students.

The regulations also contain the following:

- States will be able to set their own definition of what constitutes "students with the most significant cognitive disabilities." The regulation does not create a separate category of disability. Rather, the term "students with the most significant cognitive disabilities" includes 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, speech or language, and hearing impairments) and (2) whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction.
- The 1.0 percent cap applies to the number of proficient and advanced scores on alternate assessments based on alternate standards that may be included in AYP determinations. It does not limit the number of students taking an assessment based on alternate achievement standards. However, any proficient and advanced scores based on alternate achievement standards (from either alternate or out-of-level assessments) above the 1.0 percent cap must be counted as not proficient

relative to grade-level standards. No scores, including those from alternate or out-of-level assessments, may be excluded from AYP calculations.

- For an alternate assessment based on grade-level achievement standards, all proficient and advanced scores may be counted in AYP calculations.

For most schools, the expectation is that only a small portion of students with disabilities – those with the most significant cognitive disabilities – will participate in an alternate assessment based on alternate achievement standards and all other students with disabilities will be assessed against grade-level achievement standards. In consideration of small schools and those that provide special services, the 1.0 percent cap is not applied at the school level.

- In those circumstances in which a district has more than 1.0 percent of its students score proficient or advanced on an alternate assessment based on alternate achievement standards, the state must determine which proficient scores are counted as non-proficient at schools in the district responsible for students who took an alternate assessment based on alternate achievement standards. This ensures that schools do not have an incentive to inappropriately increase the number of students assessed based on alternate achievement standards.

Some critics say that this 1 % rule is too limiting requiring otherwise proficient scores to be counted as non-proficient in those circumstances in which a district has more than 1.0 percent of its students score proficient or advanced on an alternate assessment based on alternate achievement standards. They argue that proficient or advanced scores should be counted for all students who are determined to need alternate achievement standards and alternate assessments.

- States may apply to the Secretary for exceptions in order to slightly exceed the 1.0 percent cap. Likewise, districts may apply for exceptions from their state using a similar process. To ensure that states make timely AYP determinations based on 2003-2004 assessment data, states will be informed of the process and deadline for submitting applications to exceed the 1.0 percent cap.
- Each state that wishes to use alternate achievement standards must establish clear and appropriate guidelines for individualized education program (IEP) teams to apply in determining when a child's significant cognitive disability justifies an assessment based on alternate achievement standards.
- This rule requires states to promote use of appropriate accommodations, providing appropriate guidance to individualized education program (IEP) teams, and training for teachers and other staff in how students may be assessed appropriately. However, the regulations do not specifically address modifications and accommodations. ED has indicated that additional guidance on this requirement is forthcoming.

This is an opportunity for ASHA members to be involved with the IEP teams making these decisions. The issue of accommodations and modifications will be addressed in an upcoming NCLB fact sheet resource that ASHA will be developing in the near future.

The final rule does not alter the responsibility of the IEP team to make individual determinations about how a child is assessed. Instead, it restricts, solely for purposes of calculating AYP, the number of scores based on alternate achievement standards that can be counted as proficient or advanced.

In addition, the rule:

- provides background information on the inclusion of children with disabilities in state assessment programs and clarifies the use of alternate achievement standards for students with significant cognitive disabilities in calculating AYP.
- identifies and discusses key concepts that are critical to understanding the amendments to the Title I regulations, including alternative assessments; out-of-level assessments; and the 1.0 percent cap.
- requires documenting that these students, to the extent possible, are included in the general curriculum and participate in assessments aligned with content standards.
- adds a section that addresses consistency in the use of scores for this group in calculating AYP and informing parents of actual achievement levels; and
- affirms the requirement that, if a student takes a state assessment for a particular subject or grade level more than once, the state must use the student's results from the first administration to determine AYP.

The Secretary of Education welcomes comments about how the regulations are working over time and may consider future revisions. ED intends to issue a report on the implementation of the regulation in two years and may issue regulations and guidance on other related issues in the future. The final rule can be viewed in full on the ED's Web site at:

<http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/03-30092.htm>. For regulatory questions, please contact Catherine D. Clarke, ASHA's Director of Education and Regulatory Advocacy, via e-mail at [cclarke@asha.org](mailto:cclarke@asha.org) or by phone at 800-274-2376, ext. 4159, and for questions on practice implementation contact Kathleen Whitmire, ASHA's Director of School Services, via e-mail at [kwhitmire@asha.org](mailto:kwhitmire@asha.org) or ext. 4137.

### **Some Commonly Used Terms:**

**Out of level assessments** – non-grade level instructional assessments; assessing at a lower grade level than the grade level that the student is assigned to.

**Alternate assessment** – is an assessment designed for the small number of students with disabilities who are unable to participate in the regular state assessment, even with appropriate accommodations. An alternate assessment may include materials collected under several circumstances, including (1) teacher observation of the student, (2) samples of student work produced during regular classroom instruction that demonstrate mastery of specific instructional strategies in place of performance on a computer-scored multiple-choice test covering the same content and skills, or (3) standardized performance tasks produced in an “on-demand” setting, such as completion of an assigned task on test day. To serve the purposes of assessment under title I, an alternate assessment must be aligned with the state's content standards, must yield results separately in both reading/language arts and mathematics, and must be designed and implemented in a manner that supports use of the results as an indicator of AYP.

An alternate assessment may be scored against grade-level standards, or in the case of students with the most significant cognitive disabilities, against alternate achievement standards.

**Alternate achievement standards** – is an expectation of performance that differs in complexity from a grade-level achievement standard. If a state chooses to create alternate achievement standards, the state is not limited to setting a single alternate achievement standard. If, however, the state chooses to define multiple alternate achievement standards, it must employ commonly accepted professional practices to define the standards; it must document the relationship among the alternate achievement standards as part of its coherent assessment plan; and it must include in the 1.0 percent cap proficient scores resulting from all assessments based on alternate achievement standards.

### **Assessments and standards options:**

Students may take state assessments based on state standards

Students may take state assessments with modification/accommodations based on state standards

Students may take alternate assessments based on state standards

Students may take alternate assessments based on alternate achievement standards