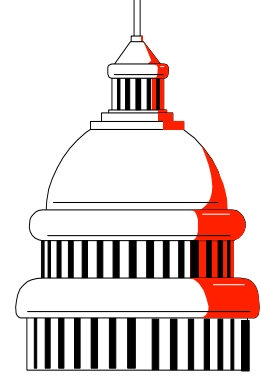




Public Policy Update



Summary of Regulations and Guidance on Accountability for the Academic Achievement of Students with Significant Cognitive Disabilities

The U.S. Department of Education in December, 2003 issued a new provision of the No Child Left Behind education reform law that gives local school districts greater flexibility in meeting the act's requirements for students with disabilities.

Under final rules published in the December 9th *Federal Register*, states, school districts and schools will have the flexibility to count the 'proficient' scores of students with the most significant cognitive disabilities who take assessments based on alternate achievement standards. Without this flexibility, those scores would have to be measured against grade-level standards and considered 'not proficient' when states measure adequate yearly progress (AYP).

Under the rule, which went into effect on January 8, 2004, these students would be tested against standards appropriate for their intellectual development and, for accountability purposes, their scores would be counted as part of their school's performance. The intent is two-fold: to protect children with disabilities from being excluded from accountability systems that provide valuable information to parents and educators and to ensure that schools receive credit for the progress of all children. The number of "proficient" scores counted for adequate yearly progress (AYP) may not exceed one percent of all students in the grades tested (nearly nine percent of students with disabilities), although states may appeal for a higher limit if they can demonstrate that they have a larger population of students with the most significant cognitive disabilities. Individual schools are not subject to the one-percent cap as it applies only to district and state accountability decisions.

The new provision was originally proposed by the Department and published in the *Federal Register* on March 20, 2003. CEC provided extensive comments to the proposed regulation; in all, about 100 comments were received from local school officials, parents and others, and were reviewed as part of the process leading to the development of the final regulations.

CEC was pleased to see that many of its recommendations, including flexibility in determining the students identified as having significant cognitive disability, were incorporated into the regulations. Two of CEC's recommendations that are part of the regulations include:

- ❖ Some students with disabilities may be assessed at their achievement level or "out of level testing" used for students with special needs.

- ❖ While all students with disabilities will participate in assessments, the IEP team decides how an individual student will be assessed and the methods used. The final rule does not alter the IEP team's responsibility to make individual determinations about how a child is assessed.

The accountability provisions of No Child Left Behind require school districts and schools to achieve adequate yearly progress (AYP), the minimum level of improvement that must be met every year. In technical terms, AYP refers to the percentage of students who must reach the state's definition of academic proficiency each year in order for all students to be proficient by 2013-14. States must specify annual objectives to measure the progress of all students, including specific subgroups of students-defined by poverty, race and ethnicity, disability and limited English proficiency-in order to ensure that every child reaches proficiency in reading and math by 2013-14. This year, for the first time, every state is required to publicly report which schools have not made AYP.

The new rule does not limit how many students can be tested with an alternate assessment; it limits only the number of scores based on alternate achievement standards that can be included as proficient in AYP measurement calculations. The new guidelines still call for the alternate achievement standards to be tied to state academic content standards.

Although CEC says the new regulations give much needed flexibility to states and districts in meeting AYP, it warns that implementing the regulations will take a huge investment in training and technical assistance. CEC says the U.S. Department of Education needs to develop a strategic plan to assist states and districts to develop alternative achievement standards and their corresponding assessments quickly.

To access the final regulations, go to:

<http://www.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.html>

or

<http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/pdf/03-30092.pdf>

Note: CEC has reviewed the final regulations implementing these provisions, and has provided a summary of them – including how the final regulations differ from the March 20, 2003 Notice of Proposed Rulemaking – below. To see our summary, go to:

http://www.cec.sped.org/pp/Amend_Title_I_ESEA_Ross.pdf

Requesting Exemption to the 1 Percent Cap

As discussed above, the number of "proficient" scores counted for adequate yearly progress (AYP) may not exceed 1 percent of all students in the grades tested (nearly 9 percent of students with disabilities), although states may appeal for a higher limit if they can demonstrate that they have a larger population of students with the most significant cognitive disabilities.

After the Education Department issued its final regulations on AYP late last year, many states questioned how they should seek an exemption to the 1% cap on the number of proficient scores that can be counted from alternate assessments.

In response, the Department on March 2nd issued new policy guidance that describes the process states need to follow if they seek to request an exception to the 1% rule. The guidance was contained in a letter that went to all Chief State School Officers. In order to exceed the exemption cap, states must provide the following information, including:

- ❖ An explanation of circumstances that result in more than 1 percent of all students statewide having the most significant cognitive disabilities and who are achieving a proficient score on alternate assessments based on alternate achievement standards;
- ❖ Data showing the incidence rate of students with the most significant cognitive disabilities; and
- ❖ Information showing how the state has implemented alternate achievement standards.

A district may initiate an exception request, or a state may apply for an exception on behalf of a district. In either case, the district should provide evidence that explains why more than 1 percent of all students in the district's tested grades have the most significant cognitive disabilities.

To read the letter to the state school officers, go to:

<http://www.ed.gov/admins/lead/account/csso030204.html>