



Summary of ED's 2% Rule For Students with Disabilities: Alternate Assessments Based on Modified Academic Achievement Standards

The U.S. Department of Education (ED) released final regulations to allow states to assess certain students with disabilities using an alternate assessment, commonly referred to as the 2% rule, under the No Child Left Behind (NCLB) Act. The new regulations were published in the April 9, 2007, *Federal Register*, which can be viewed at <http://www.ed.gov/news/pressreleases/2007/04/04042007.html>.

Specifically, states may develop modified academic achievement standards based on grade-level content – and alternate assessments based on those standards – for students with disabilities who are capable of achieving high standards but who may not reach grade level in the same time as their peers. Effective May 9, 2007, the regulations permit states to count 2% of proficient and advanced scores on alternate assessments based on modified academic achievement standards when measuring adequate yearly progress (AYP). Previously, ED released regulations for students with the most significant cognitive disabilities, where states may count up to 1% of proficient and advanced alternate assessment scores based on alternate achievement standards toward the AYP calculation (the 1% rule for students with the most significant cognitive disabilities). ASHA's summary of the 1% rule for students with the most significant cognitive disabilities can be found at <http://www.asha.org/NR/rdonlyres/9C32DA50-4F9C-4F88-9540-5D1987E6FF93/0/1percentruleanalysis.pdf>.

The regulations also contain the following:

- States have additional flexibility regarding state, local educational agency (LEA), and school accountability for the achievement of a small group of students with disabilities whose progress is such that, even after receiving appropriate instruction, including special education and related services designed to address the students' individual needs, the students' IEP Teams are reasonably certain that the students will not achieve grade-level proficiency within the year covered by the students' IEPs. These are not students with the most significant cognitive disabilities, but rather that small group of students whose disability has precluded them from achieving grade-level proficiency and whose progress is such that they will not reach grade-level achievement standards in the same time frame as other students. These regulations permit but do not require states to develop an assessment that is appropriately challenging for this group of students as part of the state accountability and assessment systems, based on modified academic achievement standards that cover grade-level content.
- In order for these students to have an opportunity to achieve at grade level, they must have access to and instruction in grade-level content. The regulations have a

- number of safeguards to ensure that these students have access to grade-level content so that they can work toward grade-level achievement.
- Modified academic achievement standards are academic achievement standards based on a state's grade-level academic content standards for the grade in which an eligible student with disabilities is enrolled, but with less rigorous expectations of mastery of grade-level academic content standards. They must represent the full array of content standards, including factual knowledge and application of skills, with the same pattern of emphasis that is evident in the state's grade-level academic content standards. Also, they describe at least three levels of achievement, include descriptions of the competencies associated with each achievement level, and include assessment scores that differentiate among the achievement levels. Modified academic achievement standards must be developed through a documented and validated standards-setting process that includes broad stakeholder input, including persons knowledgeable about a State's academic content standards and experience in standards setting and special educators who are most knowledgeable about children with disabilities.
- Many of the students eligible for these assessments are in regular classrooms with children of the same chronological age and are receiving instruction in grade-level curriculum. These students may be in any of the disability categories listed in IDEA and may represent a wide spectrum of abilities. These students are NOT required to receive direct instruction in grade-level content in order to be eligible for an alternate assessment based on modified academic achievement standards. Rather, if the IEPs of these students include goals for a subject assessed, those goals must be based on grade-level content standards. This is to help ensure that students have access to grade-level content before they are assessed based on modified academic achievement standards and that they receive instruction in grade-level content after they are assessed. This is critical to ensure that students are prepared to demonstrate their mastery of grade-level content and can move close to grade-level achievement.
- The child's IEP team, not the LEA, is responsible for determining how the child will participate in state and district-wide assessment. Criteria must include: (1) objective evidence demonstrating that the student's disability has precluded the student from achieving grade-level proficiency in the content area assessed and (2) multiple valid measures of the student's progress over time to be reasonably certain that the student will not achieve grade-level proficiency within the year covered by the student's IEP. Further, the student's IEP must include goals that are based on the academic content standards for the grade in which the student is enrolled. This requirement was put in place to focus IEP teams on identifying the educational supports and services that the student needs to reach those standards, and to align the student's instruction with the general education curriculum and the assessment that the IEP team determines is most appropriate for the student. States are required to provide IEP teams with criteria to use in determining which students with disabilities are eligible to be assessed based on modified academic achievement standards. For each subject, the IEP team must annually review its decision to assess a student based on

modified academic achievement standards to ensure that those standards remain appropriate.

- The measure must be based on grade-level academic content standards and cover the same grade-level content, although the assessment may be less difficult than the state's regular assessment. States may employ a variety of strategies. Some examples of strategies may include: replacing the most difficult items with simpler items; modifying items by eliminating one of the incorrect answers in a multiple choice text; developing a unique assessment that provides flexibility such as technology to access items, dictation of answers, or use of mathematics manipulatives to illustrate conceptual or procedural knowledge.
- Students may be assessed based on modified academic achievement standards in one or more of the subjects tested. States are now permitted to administer their state assessments (including regular and alternate assessment) more than once and include the student's best score in determining AYP. Up to 2% (approximately 20 percent of students with disabilities) of the proficient and advanced scores from alternate assessments based on modified achievement standards may be included in calculating AYP. ED states that the 2% cap is necessary to ensure that modified academic achievement standards are used appropriately.
- State supports for IEP teams:
 - (a) States must provide IEP teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State and local policies on a student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards.
 - (b) States must inform IEP teams that a student may be assessed based on modified academic achievement standards in one or more subjects for which assessments are administered.
 - (c) States must establish and monitor the implementation of clear and appropriate guidelines for an IEP team to apply in developing and implementing an IEP for a student who is assessed based on modified academic achievement standards. The IEP of a student assessed based on modified academic achievement standards must include IEP goals that are based on the academic content standards for the grade in which the student is enrolled, and be designed to monitor the student's progress in achieving the student's standards-based goals.
 - (d) States must develop guidelines that identify the accommodations for each assessment that do not invalidate the score, and instruct IEP teams to select, for each assessment, only those accommodations that do not invalidate the score. This reflects the state's requirement to ensure that regular and special education teachers and

other appropriate staff know how to administer assessments, including making appropriate use of accommodations for students with disabilities.

- ED makes it very clear that only the academic achievement standards, and not the content on which they are assessed, can be modified. Their rationale is that allowing modified academic achievement standards to focus on something other than grade-level content standards (e.g., allowing them to be based on a student's instructional level) would lower expectations and limit opportunities for these students to access grade-level content and meet grade-level achievement standards. ED is firm that these students must have access to a curriculum based on grade-level content standards so that they can move closer to grade-level achievement.

In addition, the regulation:

- Permits a state to include, for a period of up to two years, the scores of students who were previously identified with a disability under IDEA in AYP calculations but who no longer receive special education services. A state, however, would not be able to include the scores of former students with disabilities as part of the students with disabilities subgroup in reporting any other information (e.g., participation rates) under Title I.
- Codifies the final regulations on accountability for former limited English proficient (LEP) students published in the *Federal Register* on September 13, 2006.

To ensure a coordinated administration of the IDEA and Title I programs, the final IDEA regulations on assessment in § 300.160 incorporate provisions regarding modified academic achievement standards that are consistent with the changes to these regulations under Title I of the ESEA. In addition, the final IDEA regulations provide that a state's (or in the case of a district-wide assessment, an LEA's) guidelines must require each child to be validly assessed and must identify, for each assessment, accommodations that would result in an invalid score. Consistent with Title I, these final regulations also provide in § 300.160(f)(1) that a student taking an assessment with an accommodation that invalidates the score would not be reported as a participant under the IDEA.

ED also released non-regulatory guidance at <http://www.ed.gov/policy/speced/guid/nclb/twopercent.doc> on the implementation of the new 2% final regulations, offering recommendations on issues such as how students with disabilities can be appropriately identified for this assessment. For more information on the regulations, contact Catherine D. Clarke, ASHA's Director of Education and Regulatory Advocacy, by e-mail at cclarke@asha.org or by phone at 800-498-2071, ext. 4159, or for practice-related questions contact Kathleen A. Whitmire, PhD, CCC-SLP, ASHA's Director of School Services by e-mail at kwhitmire@asha.org or by phone at 800-498-2071, 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% cap proficient scores resulting from all assessments based on alternate achievement standards.

Modified Achievement Standards – are academic achievement standards based on a state's grade-level academic content standards for the grade in which an eligible student with disabilities is enrolled, but with less rigorous expectations of mastery of grade-level academic content standards. They must represent the full array of content standards, including factual knowledge and application of skills, with the same pattern of emphasis that is evident in the State's grade-level academic content standards. Also, they describe at least three levels of achievement, include descriptions of the competencies associated with each achievement level, and include assessment scores that differentiate among the achievement levels. Modified academic achievement standards must be developed through a documented and validated standards-setting process that includes broad stakeholder input, including persons knowledgeable about a state's academic content standards and experience in standards setting and special educators who are most knowledgeable about children with disabilities.

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 modified achievement standards
- Students may take alternate assessments based on alternate achievement standards