



Analysis: 2008 NCLB Title 1 Final Regulations

ASHA has prepared the following analysis of the 2008 No Child Left Behind (NCLB) Title 1 final regulations, which amends current Title 1 regulations in the areas of assessment, accountability, public school choice, and supplemental educational services.

The final regulations were published in the October 29, 2008, *Federal Register*, Department of Education (ED) and can be found at <http://edocket.access.gpo.gov/2008/pdf/E8-25270.pdf>.

With input from a member advisory group, the following issues have been identified as significant to speech-language pathologists (SLPs), audiologists, and the children that they serve.

Assessments

§200.2 State Responsibilities for Assessment

Major Changes:

Regulations require that all State assessments involve multiple measures of academic achievement for all students, including those with disabilities, and clarifies the meaning of “multiple measures” in the statute to mean that States may use single or multiple question formats, or multiple assessments within a subject area. ED also clarifies that if a State chooses to make substantive revisions to its assessment system specifically by changing the way it implements the multiple measures requirement, it must first submit its proposed changes to ED for peer review.

ASHA Position:

ASHA supports the changes in this section that clarifies that districts will have the option of using multiple measures in the assessment process for all students, including students with disabilities. It is especially important, as indicated in the regulations, that the State’s assessment system measure the full range of cognitive complexity in the State’s academic content standards, and would include items measuring higher order thinking skills as well as knowledge and recall items to assess the depth and breadth of mastery of a particular content domain.

Impact on Members:

SLPs and audiologists need to be aware of the nature of State assessments and their roles in it, as well as the use of assessment data to make decisions in eligibility and program planning.

Disaggregation of Data

§200.7 Disaggregation of Data

Major Changes:

The regulations clarify that State definitions of adequate yearly progress (AYP) must include a minimum group size that is based on sound statistical methodology that yields statistically reliable information for each purpose for which disaggregated data are used, and ensures that, to the maximum extent practicable, all student groups are included, particularly at the school level, in accountability determinations.

ASHA Position:

ASHA supports the requirement on disaggregation of data by disability category in the regulations. ED did not agree with ASHA's recommendation that State education agencies (SEAs) and local education agencies (LEAs) not only be required to disaggregate data for AYP for students with disabilities but also by disability category as well, including the student with multiple disability category. This would have revealed the composition of students with disabilities meeting or not meeting AYP, and would have been useful to help schools, school districts, States, teachers, and special education service providers expeditiously adapt to the results of annual testing to clarify among other things staff needs. ASHA will continue to advocate for disaggregation by disability category.

Impact on Members:

Minimal

High School Graduation Rates

§200.19 Other Academic Indicators

Major Changes:

The most significant change is the establishment of a uniform and more accurate measure of calculating the graduation rate that is comparable across States. Provisions also allow States to develop, for approval, an "extended-year adjusted cohort graduation rate."

Other changes include:

- States are required to set a single graduation rate goal beginning with AYP determinations for SY2009-2010; however, individual schools may have different annual graduation rate targets.
- The definition or clarification of "students who transfer into the cohort," "four-year adjusted cohort graduation rate," "extended year adjusted cohort graduation rate," "students who graduate in four years," "transitional graduation rate," and "regulations for transfer, émigré, and deceased students" is provided.

- The calculation of both a “four-year adjusted cohort graduation rate” and application for an “extended-year adjusted cohort graduation rate” are permitted. The Averaged Freshman Graduation Rate calculation is not required prior to the use of an “adjusted cohort graduation rate.”
- Beginning with AYP determinations for SY2011-2012, States must use the “four-year adjusted cohort graduation rate” to calculate AYP at the school, LEA, and State levels in the aggregate and disaggregated by subgroup.

ASHA Position:

ASHA supports the concept of generating a standard definition of “graduation rate.” The inclusion of the “extended-year adjusted cohort graduation rate” provision in the regulations addresses ASHA’s concerns that students with disabilities (e.g., with an IEP, 504 plan) or students with significant medical issues not graduating within the standard number of years (a) would not be a reason for districts to be penalized and deemed not to have met federal standards for graduation rate and/or AYP; and (b) that students with special needs who are making progress towards meeting the graduation requirements should qualify for the alternate definition of graduation. In short, ASHA recommends alignment between NCLB and provisions in IDEA 2004.

Impact on Members:

ASHA members need to be mindful of their role in contributing to students overall academic success and ability to graduate within timelines outlined in the regulations.

Also, ASHA suggests that recommendations for number of years needed to graduate should be made by the IEP team in consideration of the student’s individual needs, and that members should advocate within their States for their SEA to develop and apply for permission to use one or more extended-year adjusted cohort graduation rate.

Growth Models

§200.20 Making Adequate Yearly Progress

Major Changes:

Regulations permit all States to request authority to incorporate individual student academic growth (using what is often referred to as a “growth model”) in a State’s definition of AYP. Criteria is established in this section to help ensure that States develop growth models that hold schools accountable for the achievement of all students to the State standards and that these standards establish annual targets for individual students that will lead to all students being proficient by the 2013–2014 school year.

ASHA Position:

ASHA supports the integration of a growth model option in Sec. 200.20(h)(2) that incorporates student academic growth in the State's definition of AYP. Although ASHA advocated that the student's progress on IEP goals be measured as part of the student's growth, the final regulations require that students with disabilities must be assessed based on the State's grade level academic achievement standards, not a student's IEP goals. The regulations do not limit the number of States that may incorporate individual student academic growth into their AYP definitions, but student progress must be tracked based on the State's progress measures, not IEP measures. The State must have a longitudinal data system in place to track student progress from grade to grade and measure student achievement over time.

Impact on Members:

ASHA members should consider the following:

- Since accountability remains focused on AYP, it is important for speech-language pathologists (SLPs) to continue to focus on engaging in treatment for students with communication disorders that contribute to meeting State academic content standards, especially through the strengthening of literacy skills.
- SLPs should be cognizant of the nature of the information evaluated by the State assessments and develop treatment plans that parallel those standards as much as possible.
- SLPs should be aware of the performance outcomes for students with whom they work and this data should be given strong consideration in the development of IEP goals. Curriculum based treatment is still critical in helping students to make AYP.
- Growth model information should be tracked by the SLPs as one measure of progress, thus determining how successful the SLP's treatment is in helping students to achieve academic success.

National Technical Advisory Council**§200.22 National Technical Advisory Council****Major Changes:**

The final regulations codify the creation of the National Technical Advisory Council (National TAC) to advise the Secretary on complex and technical issues regarding the design and implementation of State standards, assessments, and accountability systems. Provisions also make clear that the National TAC must include members who have knowledge of and expertise in designing and implementing standards, assessments, and accountability systems for all students, including students with disabilities and Limited English Proficient (LEP) students.

ASHA Position:

ASHA supports the establishment of a National TAC to advise the Secretary on technical issues related to the design and implementation of State standards including assessment and accountability standards. We also recommend that the Committee be comprised of individuals who have had successful teaching experiences in public schools, including SLPs and audiologists.

Impact on Members:

ASHA members can be involved by:

1. Serving as members of the National and their State technical advisory committees (TAC).
 2. Nominating future members of the National and State TAC.
 3. Providing comment during meetings of the National TAC.
 4. Reviewing the summaries of the meetings that will be posted on the Department's Web site.
 5. Providing input to your State TAC.
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School Improvement and Supplemental Educational Services (SES)**§200.37 Notice of Identification for Improvement, Corrective Action, or Restructuring****Major Changes:**

Provisions require an LEA to indicate, in its notice to parents, those SES providers who are able to serve students with disabilities or LEP students.

ASHA Position:

ASHA supports the change requiring LEAs to indicate which SES providers are able to serve students with disabilities. ASHA reiterates its position that independent monitoring of the effectiveness of SES services should be conducted regularly.

Impact on Members:

ASHA members are uniquely qualified to provide these SES services. It is suggested that members complete the following:

- Obtain information on becoming an SES service provider and complete the application process.
- Encourage family members to choose only fully credentialed service providers.
- Confirm that they are on the list of service providers posted on SEA and LEA Web sites and direct families to the list and Web site.

SLPs who provide SES services also need to:

- Be aware of the criteria LEAs use to monitor their effectiveness.
- Ensure that student goals and services are based on appropriate assessment and scientifically based instruction, and that realistic timelines are set for achieving the goals.
- Ensure that goals are aligned with instructional content and that achievement of goals contributes to increased academic proficiency.
- Provide accurate records demonstrating student progress toward goals.
- Ensure that appropriate documentation, including billing and adherence to privacy laws, are maintained.

§200.39 Responsibilities Resulting From Identification for School Improvement

Major Changes:

The regulations require an LEA to display certain information regarding public school choice and supplemental education services (SES) on its Web site in a timely manner to ensure that parents have current information. It also requires an SEA to post on its Web site the required information for any LEA that does not have its own Web site.

ASHA Position:

ASHA supports the provisions in this section on supplemental educational service and public school choice that would make information regarding an LEA's implementation of the public school choice and SES requirements available and transparent to the public. This would hold LEAs accountable for implementing these requirements and lead to greater student participation. It would also assist parents in making informed choices for their children.

Impact on Members:

ASHA members should ensure that they are on the lists published on the LEA and SEA Web sites.

§200.47 SEA Responsibilities for Supplemental Educational Services

Major Changes:

The provisions contain several important changes, including:

- Requires an SEA to post on its Web site, for each LEA, the amount of funds the LEA must spend on choice-related transportation and SES and the maximum per-pupil amount the LEA must spend for SES.
- Requires an SEA to indicate on its list of approved SES providers those that are able to serve students with disabilities or LEP students.

- Requires an LEA to ensure that the instruction a provider gives and the content a provider uses are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children.

ASHA Position:

ASHA supports the above provisions, especially the requirement that SEAs indicate on its list of approved SES providers those that are able to serve students with disabilities or LEP students. ASHA will continue to work with ED to further expand the regulations to require SEAs to document how they plan to monitor the effectiveness of SES providers and the content of their instruction. This would ensure that each LEA providing SES services be held accountable for the provider qualifications and provide assurances that instruction meets academic content and achievement standards and addresses the individual needs of the participants.

Impact on Members:

LEAs should have enough available service providers to ensure that all children requiring supplemental education services (SES) receive them in a timely and appropriate manner.

SLPs who provide SES services need to:

- Be aware of the criteria LEAs use to monitor their effectiveness.
- Ensure that student goals and services are based on appropriate assessment and scientifically based instruction and that realistic timelines are set for achieving the goals.
- Ensure that goals are aligned with instructional content and that achievement of goals contributes to increased academic proficiency.
- Provide accurate records demonstrating student progress toward goals.
- Ensure that appropriate documentation, including billing and adherence to privacy laws, are maintained.

Since a potential conflict could arise when, as an SES provider, the SLP also serves as the student's primary service provider, the SES provider must ensure that the goals developed for supplemental services are based on student needs, that services are of high quality and research-based, that all applicable laws are followed, and that progress is continuously monitored and documented to demonstrate student progress toward academic proficiency.

As in the delivery of any services, members must adhere to ASHA's Code of Ethics located on the ASHA Web site at <http://www.asha.org/docs/html/ET2003-00166.html>.

Since providing supplemental education services is comparable to providing services in a private practice setting, especially when making ethical decisions, another article that may be helpful to review is "Accepting Referrals for Private Practice From Primary Place of Employment" which is found at <http://www.asha.org/docs/html/ET2008-00298.html>.

Other Issues

§200.44 Public School Choice

Major Changes:

Provisions make clear that an LEA must offer, through the 14-day notice required under Section 200.37, the option for parents to transfer their child to a different school the year following the school year in which the LEA administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring.

ASHA Position:

ASHA supports the 14-day notice period by ED and believes that parents should also be provided with enough information regarding the availability and quality of services for students with special needs to make an informed choice/decision.

Impact on Members:

ASHA members should encourage parents to request continuation of services for their child in the new school district and advocate for proper staffing so appropriate services can be provided to their child with minimal interruption.

§200.56 Highly Qualified Teacher

Major Changes:

There are technical changes to the definition of “highly qualified teacher” that align the Title I regulations with the Individuals with Disabilities Education Act (IDEA) to make clear that a special education teacher is highly qualified under §200.56 (NCLB/ESEA) if the teacher is a “highly qualified special education teacher” under 34 CFR 300.18 (IDEA).

ASHA Position:

ASHA supports the concept of “highly qualified teachers.” As it pertains to speech-language pathology and audiology professionals providing services to students with communication disorders, ASHA recommends attaining highly qualified status through the achievement of the certificate of clinical competence (CCC).

Impact on Members:

Through a rigorous qualification process necessary to acquire the CCC, SLPs attain a high level of expertise and maintain and acquire new skills through required continuing education.

It is essential for members to communicate the importance of the ASHA credentials to parents and administrators. For more information on the benefit of the CCC, please visit http://www.asha.org/about/membership-certification/cert_benefits.htm.