



A Union of Professionals

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ALERT

U.S. Education Department Releases Final Rules on Standards for Severely Disabled

On December 9, 2003, the U.S. Education Department (ED) released its final rules clarifying the NCLB's accountability provisions for students with the most significant cognitive disabilities. The final rules allow states to set up alternate standards for measuring progress for students with significant cognitive impairments. Also, the final rules kept the original proposal of a 1 percent cap on the number of students whose "proficient" or higher scores based on alternate standards will count towards adequate yearly progress (AYP).

There were some additional changes as well. Here are the ones that you should know more about:

- **Who decides which students have "Significant Cognitive Disabilities"**
According to final regulation 200.6(a) (2) (iii) (A), states must implement guidelines for individualized educational program (IEP) teams so that they may establish whether certain students require assessments based on alternate standards. This change reflects a deviation from the original proposal which said that only students whose intellectual functioning and adaptive behavior were three or more standard deviations below the mean could be evaluated using alternate standards.
- **One percent cap now applies to AYP calculations for the State, District and School**
Remaining unchanged is the calculation of AYP at both the state and district level, the number of proficient and advanced scores based on alternate standards cannot exceed 1 percent of all students in the grades tested. The new changes are the consequences for exceeding the 1 percent limit. ED has clarified that breaking the limit will affect school AYP as well. Section 200.13(c) (4) of the final rule says that scores exceeding the cap must be relabeled as "not proficient". Each state must set up rules for deciding which students' scores will be relabeled. This relabeling must then apply to AYP calculation not only for your state and your district, but for each *school* with students whose scores are relabeled. In addition, it will apply to each disaggregated subgroup in which a student belongs. The additional change will now require districts to inform parents of the actual achievement levels of their children. A student may have more than one label and parents must be informed of both.

EXAMPLE

The Lawrenceville District has 1,000 students in the grades assessed. Fifteen will receive scores of proficient or higher based on alternate standards. However, the 1 percent cap will only allow 10 of these students' scores count as proficient or higher for AYP calculation. This means five students' scores have to be relabeled as "not proficient" when determining AYP. Adhering to state's rules, Lawrenceville District determines which five students' scores must be relabeled. One of the five students, Hidalgo

Sanchez, attends Quinn Elementary School. On his assessments, he scored “proficient” when measured against the state’s alternate standards, but those scores must now be relabeled “not proficient”. Hidalgo is disabled and Hispanic. His scores will now count as “not proficient” in Quinn Elementary’s AYP disaggregation groups for all students, Hispanics and students with disabilities. The district must send a notice to Hidalgo’s parents telling them he scored as “proficient” when measured against the state’s alternate standards but “not proficient” when measured against the state’s regular standards.

- **Stringent requirements for getting exceptions**

Within the proposal, final regulation 200.13(2) allows states and districts to request exceptions to the 1 percent cap if they can document that they have an unusually large percentage of severely cognitively disabled students. States may apply to ED for an exception and districts may apply to their states. Now, the state or district must show that it’s actively addressing requirements designed to limit potential abuse of alternate standards. At the district level, this means cooperation with the state’s obligations on issues such as implementing clear guidelines for IEP teams, reporting on the use of alternate standards and assessments and encouraging the use of regular standards for this population of students.

- **Reporting Requirements Expanded**

In its commentary to the final regulations, ED reports that it changed the proposed reporting requirements by limiting their application just to states, rather than to both states and districts. Not only what these state reports must cover has been expanded but, they may now ask districts to collect the information to meet these new requirements. Under regulation 200.6(a), states are required to:

- Document notification to those parents whose child is going to be assessed based on alternate achievement standards;
- Disaggregate the number and percentage of students with disabilities taking regular assessments, alternate assessments based on grade level standards, and alternate assessments based on alternate achievement standards; and
- Demonstrate that students with the most significant cognitive disabilities are to the extent possible, included in the general education curriculum and in assessments aligned with that curriculum.

The rule was published in the *Federal Register*, Vol. 68, No. 236, 12/09/03, pp.68698-708. The rule is available in both HTML and PDF formats, at the ED Office of Elementary and Secondary Education Web site:

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