



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

APR 10, 2003

Mr. Lawrence C. Gloeckler
Deputy Commissioner
Office of Vocational and Educational Services for
Individuals with Disabilities
Room 1606 One Commerce Plaza
Albany, New York 12234

Dear Mr. Gloeckler:

Thank you for your letter requesting clarification on guidance provided to the field regarding the administration of State and district-wide assessments to students with disabilities and the role of the Individualized Education Program (IEP) team relative to these assessments. We agree with your point that the common understanding of the terms 'accommodations' and 'modification' in the testing community have evolved considerably since the enactment of the Individuals with Disabilities Education Act Amendments of 1997. In light of that developed understanding, you asked that we rescind prior Office of Special Education and Rehabilitative Services' policy that a State may not require that an IEP team only choose among modifications to the administration of assessments that the State has determined will not change the nature of the material being tested.

We agree that States must have the ability to ensure that State assessments are valid, reliable, and consistent with professional and technical standards, especially when the results will have critical consequences for the student or the school. This is especially important, given the emphasis under No Child Left Behind on accountability for results. States should provide appropriate direction to school districts and IEP teams on issues including the design and constructs measured by various required tests. Depending on the circumstances specific to the State, such direction may need to include which test accommodations and modifications in administration are valid and which accommodations and modifications in administration would invalidate the assessment or part of the assessment.

Section 300.347(a)(5) of the regulations implementing the IDEA provides that among other elements, a child's IEP must include:

- (i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and

- (ii) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of -
 - (A) Why that assessment is not appropriate for the child; and
 - (B) How the child will be assessed.

The IDEA does not prohibit a State from determining what accommodations and modifications in administration invalidate a test or a part thereof. We believe that the language in 34 CFR 300.347 (a)(5)(i) can be interpreted to mean that a child with a disability is not considered as participating in an assessment, for purposes of the IDEA, if he or she is given an accommodation or modification in administration that invalidates the assessment. Where there are multiple parts or subparts of a test, accommodations and modifications in administration could invalidate some but not all of these test parts or subparts. For example, reading the decoding section of a reading test to a student may invalidate the score on that portion of the test, but may not invalidate the score on other parts of the test. Thus, an IEP team could be instructed to select only accommodations and modifications in administration that the State has determined will not invalidate the results of a particular test or portion of a test. The determination of the accommodations and modifications in administration, if any, needed by each individual child remains an IEP team decision. If an IEP team were to determine that an accommodation or modification in administration needed by a child would invalidate the test results, the IEP team should determine how the child can appropriately be assessed, such as through an alternate assessment.

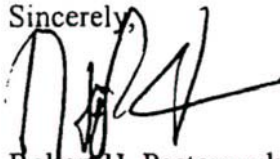
Since States are responsible for ensuring that appropriate accommodations and modifications in administration are provided, it is critical to ensure that assessments offer a wide range of accommodations and modifications in administration -- all those that do not change the nature of what is being assessed -- so that all children with disabilities for whom the regular assessment is appropriate are able to participate in the assessment. The Title I regulations at 34 CFR §200.2(b)(2) require that the State's assessment system must, "[b]e designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency." States must identify ways of ensuring that this requirement is met.

Some States may choose not to limit the IEP team's decisions regarding which accommodations and modifications in administration are available to students. In this case, it will be important that guidance on accommodations and modifications in administration clearly inform IEP teams regarding how scores will be reported and any consequences for students or schools based on the teams' decisions. For example, if use of a particular accommodation or modification in administration would invalidate a child's score on part of a test, the child may receive a score of zero for that portion of the test.

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Pursuant to 20 U.S.C. 1406(e), this letter has been designated as raising an issue of national significance to the implementation of Part B of the IDEA. As a result, within one year, the Department will be providing all States with additional written guidance as required by the statute. This letter, while not legally binding, is informal guidance representing the Department's interpretation of the relevant statutory and regulatory requirements in the context of the facts raised herein.

I hope that this information is helpful. If you have any additional questions, please feel free to contact Dr. JoLeta Reynolds at (202) 205-5507.

Sincerely,

Robert H. Pasternack