

March 2, 2004

Dear Chief State School Officers:

One of the most difficult issues facing States and school districts today is the inclusion of students with disabilities in their State assessment and accountability systems. The President and I strongly believe that no child should be left behind, including children with disabilities. As a result, I continue to support vigorously the Title I requirements that all students, including students with disabilities, be held to the same challenging content and achievement standards.

More so than most other students, students with the most significant cognitive disabilities face unique challenges in meeting grade-level expectations. Accordingly, we recently finalized a regulation that allows States, in meeting the Title I requirements, to use alternate assessments based on alternate achievement standards for students with the most significant cognitive disabilities. A copy of this regulation is available on the Department's Internet website at: <http://www.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.html>

When this regulation was issued in final form, we promised to provide additional guidance to States about how they might seek an exception to one aspect of this regulation - the limit on the number of proficient scores that may be included in AYP decisions. We recognize that there may be valid reasons why a 1.0 percent cap is not sufficient for a State or district. Accordingly, a State may apply to the Secretary for exceptions in order to exceed slightly the 1.0 percent cap. For States wishing to seek an exception, we offer the following to facilitate this process.

The State should contact Kerri Briggs (kerri.briggs@ed.gov; 202-401-0113), in my office, no later than three months prior to the date by which schools will be notified about identification for improvement, if an exception is necessary for AYP decisions based on 2003-2004 assessment data. We will arrange conversations with the State staff to discuss the details and get a better understanding of any unique circumstances. During this process, the State should provide the following information:

- An explanation of circumstances that result in more than 1.0 percent of all students statewide having the most significant cognitive disabilities and 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. Suggested data include data on how students with the most significant cognitive disabilities are defined (such as the number of students who are within one or more categories of disability, and whose cognitive impairments prevent them from attaining grade-level achievement standards), confirmatory data demonstrating that the State has programs attracting students with the most significant cognitive disabilities, a list of local educational agencies (LEA) by total population tested if the State's rationale for an exception is small district size, or information indicating that students' participation in such assessments is made on a case-by-case basis.
- Information showing how the State has implemented alternate achievement standards (summary of §200.6(a)(2)(iii)):
 - Guidelines for individualized education program (IEP) teams to determine when a child's significant cognitive disability justifies the alternate assessment based on alternate achievement standards.
 - Information about how parents are informed that their child will be assessed based on alternate achievement standards, including information about the implications of participation in the alternate assessment if the State has identified consequences for students based on assessment results (e.g., if the State requires a student to pass an assessment based on grade level achievement standards to graduate).
 - Documentation of the number and percent of students taking an alternate assessment based on alternate achievement standards, alternate assessments based on grade level achievement standards, and regular assessments (with or without accommodations).
 - Documentation that describes how students with the most significant cognitive disabilities are included in the general curriculum and that shows how alternate assessments are aligned with that curriculum.
 - Documentation of efforts taken by the State to develop, disseminate information on, and promote the use of appropriate accommodations.
 - Documentation of efforts (such as professional development or guidance documents) taken to ensure teachers and other staff know how to administer assessments, including appropriate use of accommodations.

If necessary, we will work with an outside team of peer reviewers to examine the evidence provided by the State and to give us a recommendation. We will review the State's information provided and work with the State to come to an appropriate resolution.

We expect that it will be necessary to grant exceptions only for small increments above the 1.0 percent cap and that we will grant such exceptions only for a specified period of time, depending on the circumstances that warrant the exception.

I strongly encourage States to establish a system that is equally rigorous for LEAs that request an exception to the 1.0 percent cap. An LEA may initiate an exception request or a State may initiate an exception on behalf of an LEA; in either case, the LEA should provide evidence that explains why more than 1.0 percent of all students in the LEA's tested grades have the most significant cognitive disabilities. Further, as States consider whether to allow any exceptions, they should be mindful of how individual LEA exceptions will affect the overall 1.0 percent cap that applies at the State level. We will not grant an exception to a State based on the State's liberal granting of exceptions to LEAs.

If you have additional questions, please contact me. I am exceedingly grateful for the cooperation you and your staff have demonstrated throughout this process. Together, we can work to ensure that no child, including one with a disability, is left behind.

Sincerely,

Raymond Simon
Assistant Secretary
Office of Elementary and Secondary Education