

**DEPARTMENT OF EDUCATION****34 CFR Part 200**

RIN 1810—AA95

**Title I—Improving the Academic Achievement of the Disadvantaged**

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing programs administered under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA)—referred to in these proposed regulations as the Title I programs. These proposed regulations would clarify statutory provisions regarding State, LEA, and school accountability for the academic achievement of students with the most significant cognitive disabilities and are needed to implement changes to Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act).

**DATES:** We must receive your comments on or before May 19, 2003.

**ADDRESSES:** Address all comments about these proposed regulations to Jacquelyn C. Jackson, Ed.D., Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W230, FB-6, Washington, DC 20202-6132. The Fax number for submitting comments is (202) 260-7764.

If you prefer to send your comments through the Internet, use the following address: [TitleIrulemaking@ed.gov](mailto:TitleIrulemaking@ed.gov).

You must include the term “proposed rule” in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn C. Jackson, Ed.D., Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, Telephone: (202) 260-0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative

format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:****Invitation to Comment**

We invite you to submit comments regarding these proposed regulations. We are specifically interested in your comments on the following:

(1) Whether, in proposed § 200.13(c)(1), existing scientific research, State/LEA or national data, and the current state of knowledge support setting the cap at 1.0 percent for students with the most significant cognitive disabilities whose achievement can be measured against alternate achievement standards for determining adequate yearly progress (AYP) at the LEA and State levels.

(2) What, if any, significant implementation issues pertaining to the definition of “students with the most significant cognitive disabilities” in proposed § 200.1(d)(2) would arise at the State, LEA, and school levels. Specifically, the Department requests comments on what current recordkeeping and reporting requirements would States and LEAs use to comply with this provision and whether additional information or data will be necessary for compliance.

(3) Compliance with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

(4) How the Department should review these regulations once finalized to monitor regulatory compliance and invite more research and analysis to potentially fine-tune program implementation.

In addition, we invite you to submit additional comments on § 200.20(c)(3) of the Title I regulations published on December 2, 2002 (67 FR 71710, 71717). This regulation provides that, if a student takes a State assessment for a particular subject or grade level more than once, the State must use the student’s results from the first administration to determine AYP. We included this provision in the regulations in response to comments requesting clarification on the proposed regulations. Although there may be very sound reasons for permitting a student to take high-stakes assessments multiple

times, we believe that a student’s performance on the first administration best reflects the performance of the school in preparing the student to take the assessment, and school accountability is the focus of Title I. Several States have suggested that their practice of administering multiple assessments in certain situations and counting the scores on these assessments for school accountability purposes better reflects both student and school performance than does § 200.20(c)(3). We invite you to comment on whether § 200.20(c)(3) should be amended and, if so, how.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3W242, FB-6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Background**

These proposed regulations implement statutory provisions regarding State, LEA, and school accountability for the academic achievement of students with the most significant cognitive disabilities. They would amend final regulations published in the **Federal Register** (67 FR 45038) by the Secretary on July 5, 2002 for the standards and assessment provisions of Title I, part A of the ESEA and on December 2, 2002 (67 FR 71710) for the remaining provisions of Title I, parts A and C. These regulations implement the ESEA as reauthorized under the NCLB Act (Pub. L. 107-110), enacted January 8, 2002, which incorporated major educational reforms proposed by President George W. Bush in his No Child Left Behind initiative and significant changes to Title I of the ESEA, which is designed to help disadvantaged children meet high academic standards.

In the notice of proposed rulemaking (NPRM) published in the **Federal Register** (67 FR 50986) on August 6, 2002, the Secretary proposed in § 200.13

allowing the use of alternate achievement standards for students with the most significant cognitive disabilities for the purpose of determining the AYP of States, LEAs, and schools, provided that use at the State and LEA levels did not exceed 0.5 percent of all students. Numerous comments were received on this proposal. Many of them reflected a misunderstanding on the part of commenters who thought that the number of students with disabilities who could take an alternate assessment was being limited. Instead, the NPRM proposed to allow the use of alternate achievement standards to determine proficiency for a limited group of students with disabilities, and the use of those assessment results in the calculation of AYP. It did not propose limiting the number or percentage of students taking an alternate assessment but did propose limiting the percentage of students who take an alternate assessment that is evaluated against alternate achievement standards that may be included in the calculation of AYP.

Section 200.13 as adopted in the final regulations published in the **Federal Register** (67 FR 71710) on December 2, 2002 did not allow any use of alternate achievement standards for students with the most significant cognitive disabilities for the purpose of determining the AYP of States and LEAs. Based on the comments in response to the earlier NPRM and departmental review, we are proposing to amend the final regulations to provide for this use of alternate achievement standards. We are seeking public comment in this NPRM regarding their appropriate use in determining AYP for students with the most significant cognitive disabilities.

### Proposed Regulations

#### *Section 200.1 State Responsibilities for Developing Challenging Academic Standards*

*Statute:* Under section 1111(b)(1) of Title I, each State must adopt challenging academic content standards and student academic achievement standards (formerly called "student performance standards"). Each State must have the same academic content standards for all schools and all children in the State in mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science. In developing challenging student academic achievement standards, aligned with the State's content standards, States must describe at least

three levels of achievement: advanced, proficient, and basic.

*Current Regulations:* Section 200.1 describes the State's obligation to develop challenging academic content and student academic achievement standards in at least mathematics, reading/language arts, and, beginning in 2005–2006, science that apply to all public schools and public school students in the State. It requires that the State's academic achievement standards be aligned with the State's academic content standards and apply to every grade assessed.

*Proposed Regulations:* The proposed regulations would allow States to use a documented and validated standards-setting process to define academic achievement standards for students with the most significant cognitive disabilities, as defined in proposed § 200.1(d)(2), who take an alternate assessment. These standards must be aligned with the State's academic content standards and reflect professional judgment of the highest learning standards possible for those students.

*Reasons:* In proposing these amendments to § 200.1, we acknowledge that, while all children can learn challenging content standards, evaluating that learning by alternate achievement standards is appropriate for some small, limited percentage of students whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean.

#### *Section 200.6 Inclusion of All Students*

*Statute:* Section 1111(b)(1)(B) of the ESEA requires States to provide all public schools and all public school students in the State with the same challenging academic content standards and student academic achievement standards. Section 1111(b)(3)(C) further stipulates that a State's academic assessments must measure the achievement of all children; be aligned with the State's challenging academic content and academic achievement standards; and provide for reasonable adaptations and accommodations for students with disabilities, as defined under section 602(3) of the Individuals with Disabilities Education Act (IDEA).

*Current Regulations:* Current § 200.6 clarifies that the State's academic assessment system must include accommodations for students with disabilities as defined under section 602(3) of the IDEA and for students covered under section 504 of the Rehabilitation Act of 1973 (Section 504) to allow the State to measure the academic achievement of these students relative to the State's academic content

and achievement standards for the grades in which they are enrolled. In addition, the regulations require States to provide one or more alternate assessments for students with disabilities, as defined under section 602(3) of the IDEA, who cannot participate in all or part of the State assessment, even with appropriate accommodations. These alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.

*Proposed Regulations:* Section 200.6 would be amended to allow the alternate assessments of students with the most significant cognitive disabilities, as defined in proposed § 200.1(d)(2), to measure the achievement of those students against alternate academic achievement standards defined by the State under § 200.1(d)(1). Proposed § 200.6 would also require States to establish guidelines to ensure that alternate assessments measured against alternate achievement standards are used only for students with the most significant cognitive disabilities. States would also be required to report separately on the percentage of students with disabilities taking alternate assessments that are measured against alternate academic achievement standards and the percentage of students with disabilities taking alternate assessments that are measured against the regular achievement standards.

*Reasons:* Proposed amendments to § 200.6 acknowledge the appropriateness of allowing the alternate assessments of a small percentage of students—those with the most significant cognitive disabilities—to be measured against alternate achievement standards aligned with the State's academic content standards. (Alternate assessment of other students with disabilities must be measured against grade-level achievement standards.) Proper implementation of the requirements that States establish guidelines and report on the percentages of students with disabilities taking alternate assessments that are measured against alternate academic achievement standards will ensure that all students with disabilities are appropriately included in State assessment systems. The proposed amendment does not limit the number or percentage of students taking alternate assessments measured against achievement standards as defined in § 200.1(c), as determined appropriate by their Individualized Education Program (IEP) teams, but does limit the percentage of

those students with the most significant cognitive disabilities taking an alternate assessment measured against alternate achievement standards as defined in § 200.1(d).

*Section 200.13 Adequate Yearly Progress in General*

*Statute:* Under section 1111(b)(2)(B), each State must define what constitutes AYP of the State, and of all public elementary and secondary schools and LEAs in the State, toward enabling all students to meet the State's student academic achievement standards. This definition must apply the same high standards of academic achievement to all public elementary and secondary school students in the State, be statistically valid and reliable, and measure progress based primarily on the State's academic assessments.

To make AYP, a school must: meet or exceed the State's annual measurable objectives with respect to all students and students in each subgroup; test at least 95 percent of all students and of the students in each subgroup enrolled in the school; and make progress on the other academic indicators determined by the State.

*Current Regulations:* The current regulations governing AYP implement the statutory provisions in section 1111 of the ESEA. They require that each State demonstrate what constitutes AYP of the State and of all public schools and LEAs in the State, in a manner that applies the same high standards of achievement to all public school students; is statistically valid and reliable; results in continuous and substantial academic improvement for all students; measures the progress of all public schools, LEAs and the State based primarily on the State's academic assessment system; measures progress separately for reading/language arts and for mathematics; is the same for all public schools and LEAs in the State; and applies the same annual measurable objectives for all students and for all identified subgroups as defined in § 200.13(b)(7)(ii).

*Proposed Regulations:* The proposed regulations specify the acceptable use of alternate achievement standards identified in § 200.1(d) for students with the most significant cognitive disabilities. Specifically, proposed § 200.13(c)(1) would permit States to use those standards for students with the most significant cognitive disabilities in calculating AYP for schools, provided that the percentage of students with the most significant cognitive disabilities at the LEA and State levels, separately, does not exceed 1.0 percent of all students in the grades

assessed. Nationally, 1.0 percent of students in the grades assessed represents approximately nine percent of students with disabilities, but the actual percent varies across States. The 1.0 percent limitation applies only at the LEA and State levels. Proposed § 200.13(c)(2) allows States to request from the Secretary—and LEAs to request from the State—an exception to the 1.0 percent limitation. This request for an exception by the State or LEA must document that the incidence of students with the most significant cognitive disabilities in the State or LEA exceeds that limit and that circumstances exist that could explain the higher percentages such as a school, community or health program that has drawn families of students with the most significant cognitive disabilities into the area or a very small overall population in which case a very few students with the most significant cognitive disabilities could cause the State or LEA to exceed the 1.0 percent limitation.

Students included under § 200.13(c) who take an alternate assessment that measures alternate achievement standards would be counted as “participating” in the State's assessment system and thus would be included in determining whether 95 percent of students with disabilities enrolled in a school at the time of testing are, in fact, assessed.

*Reasons:* Under the Title I accountability system, alternate assessments based on alternate achievement standards are an appropriate way to measure the progress of only that very limited portion of students with the most significant cognitive disabilities. Moreover, holding schools accountable for students with the most significant cognitive disabilities achieving grade-level academic achievement standards may subvert the intended benefits of NCLB for these students and have undesired effects on the services they are provided.

Based on current prevalence rates of students with the most significant cognitive disabilities, and allowing for reasonable local variation in prevalence, proposed § 200.13(c)(2) would set the number of students with disabilities who may be included in accountability measures using alternate achievement standards at not more than 1.0 percent of all students assessed in a State or LEA. For accountability purposes, the performance of all other students with disabilities (including any other students with disabilities who take an alternate assessment) must be assessed against the academic achievement

standards established under § 200.1(c). This is not a limit on the number or type of students with disabilities who can take an alternate assessment.

Section 200.13 of the NPRM, published in the **Federal Register** (67 FR 50986) on August 6, 2002, proposed allowing the use of alternate achievement standards for students with the most significant cognitive disabilities for determining AYP of States and LEAs, provided that use did not exceed 0.5 percent of all students. Many comments regarding this proposal misinterpreted it to mean that the number of students with disabilities who could take an alternate assessment was being limited; rather, it proposed the flexibility of allowing the use of alternate achievement standards to determine proficiency for calculating AYP for a limited group of students with disabilities. Numerous commenters expressed concern that the 0.5 percent limit on assessments using alternate standards in the calculation of AYP ignored the incidence rate of students with the most significant cognitive disabilities, which they estimated at 2 to 5 percent. Recommended alternatives included elimination of the limit, a phase-in of the 0.5 percent limit, higher limits, permitting States to set their own limits, or using such limits for reporting purposes only and not in the calculation of AYP.

Several commenters expressed the view that the 0.5 percent limit was “especially unreasonable” for small rural districts, where a very small number of students with the most significant cognitive disabilities might cause the LEA to exceed the limit. Others wrote that the provision would be unfair to districts with large populations of students with disabilities and to schools with programs specifically designed to serve students with disabilities. Many commenters perceived the proposed limit to be in conflict with the requirement of the IDEA that all students with disabilities must be offered an alternate assessment when the regular assessment does not adequately measure their achievement.

Finally, two commenters expressed support for the 0.5 percent limit on assessments using alternate achievement standards in the calculation of AYP, while one supported the Secretary's effort to establish a realistic limit as an important step in preventing inappropriate use of alternate assessments to “hide” low-performing students in general.

The 0.5 percent of total population figure was derived based on converging scientific evidence from multiple

sources. The Metropolitan Atlanta Developmental Disabilities Surveillance Program (MADDSP) sponsored by the Centers for Disease Control (CDC) has assessed the prevalence of the moderate, severe and profound groups of mental retardation in that community at a prevalence rate of 2.9 per 1,000 for students 3 to 10 years of age, or about one-third of those with mental retardation (Boyle C, Holmgreen N, Schednel D. Prevalence of Selected Developmental Disabilities in Children 3–10 Years of Age: the Metropolitan Atlanta Developmental Disabilities Surveillance Program, 1991, MMWR Surveillance Summaries, 1996). Thus, the estimate of students is for those with an IQ of less than 50.

A later study by Roeleveld and colleagues provided a similar rate of 3.8 per 1,000 (Roeleveld N, Zielhuis GA, Gabreels F. The prevalence of mental retardation: a critical review of recent literature. *Dev Med Child Neurol.* 1997;39:125–32.). Another study indicates that students with severe to profound mental retardation are estimated at somewhat less than 0.13 percent of the total population (Beirne-Smith M, Patton J, Ittenbach R, *Mental Retardation* (6th Ed.) Upper Saddle River: Prentice-Hall Career and Technology, 2001), while 0.22 percent of the population is considered to have multiple disabilities (IDEA Annual Report to Congress, 2001). The American Association on Mental Retardation (AAMR) defines mental retardation as a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. (AAMR, *Mental Retardation: Definition, Classification, and Systems of Supports*, 10th Edition, 2002).

In general, mild mental retardation, which we are excluding from the definition of students with the most significant cognitive disabilities, is considered to be two or more standard deviations below the mean. Thus, for purposes of the Title I program, the term 'students with the most significant cognitive disabilities' is defined as covering students with intellectual functioning and adaptive behavior three or more standard deviations below the mean.

However, these numbers are generally seen as reflecting national rates, and, as a number of commenters on the earlier NPRM pointed out, may not account for more localized differences, caused by a number of factors, in the prevalence of students with the most significant cognitive disabilities. Several commenters indicated that in their

experience the prevalence of students with the most significant cognitive disabilities exceeded the 0.5 percent proposal and suggested that a limit of 1.0 percent would be more appropriate.

While not specifically comparable, because they include all students with disabilities who participate in State assessment programs through alternate assessments, and not just those students with the most significant cognitive disabilities, State data reported to the Department under the IDEA may be illustrative. Of the 38 States for which sufficient data were provided to calculate a participation rate, in 21 States 5 percent or less of students with disabilities who participated in the State assessment program took an alternate assessment. (Five percent of students with disabilities is roughly equivalent to 0.5 percent of all students.) In 14 other States, between 5 and 10 percent of students with disabilities participated in State assessment programs through an alternate assessment. (Analysis of 2000–2001–Biennial Performance Reports, National Center for Educational Outcomes) In these States, students with disabilities comprise approximately 8 to 12 percent of the total student population. (IDEA Annual Report to Congress, 2001).

In addition, national prevalence rates provide an average, but the actual numbers in a jurisdiction may be higher or lower than that average. Factors beyond the control of a school, school district, or even a State may cause the number of students with the most significant cognitive disabilities to exceed 0.5 percent of the total student population at the grades assessed. For example, in small schools, a single student may be more than that limit would allow. Moreover, certain schools, districts, or States may have disproportionate numbers of students with the most significant cognitive disabilities because of proximity to special facilities or services.

In addition, imposing a limit on the number and type of students with disabilities who can take an alternate assessment that is evaluated based on alternate academic achievement standards does not prohibit other students with disabilities from taking an alternate assessment or an assessment with appropriate accommodations when deemed necessary by the Individualized Education Program (IEP) team under the IDEA. Decisions about how an individual student participates in a State assessment remain the responsibility of the student's IEP team and must be made on an individualized basis for each student. However, only the alternate assessment of students

with the most significant cognitive disabilities may be evaluated against alternate academic achievement standards.

In sum, even though the 0.5 percent figure was based on the best available data, those data are limited. We are persuaded by the comments of a number of stakeholders who said that 0.5 percent did not reflect their experience; rather, a one percent limitation would allow for normal State and LEA variations in the occurrence of students with the most significant cognitive disabilities.

#### **Executive Order 12866**

##### *1. Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of the governmental functions.

##### *Summary of Potential Costs and Benefits*

These proposed regulations would not add significantly to the costs of implementing the Title I programs authorized by the ESEA or alter the benefits that the Secretary believes will be obtained through successful implementation.

As noted elsewhere, the proposed regulations would clarify the statute and facilitate a better understanding of its accountability requirements regarding students with the most significant cognitive disabilities. Both the statute and existing regulations require States to develop assessment systems that include alternate assessments. These proposed regulations clarify how alternate assessment results based on alternate achievement standards for a small percentage of students are to be included in the calculation of AYP within the State accountability system.

States and LEAs will benefit by receiving more accurate achievement information regarding students with the most significant cognitive disabilities.

Most implementation costs and benefits will stem from the underlying legislation. The Department believes that these activities will be financed through the appropriations for Title I and other Federal programs and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources. For purposes of the Unfunded Mandates Reform Act of 1995, these regulations do not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million in any one year.

## 2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 200.13 Adequate yearly progress in general.)
- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

## Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These provisions require States and LEAs to take certain actions to improve student academic achievement. The Department believes that these activities will be financed through the appropriations for Title I and other Federal programs and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources.

## Paperwork Reduction Act of 1995

Section 200.6 contains an information collection requirement. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review as part of the paperwork collection titled "State educational agency, local educational agency, and school data collection and reporting under ESEA, Title I, Part A".

This provision of the Title I, part A regulations requires States to establish guidelines to ensure that the alternate academic achievement standards defined under § 200.1(d) are used only for students who have the most significant cognitive disabilities. In addition, it requires schools and LEAs to annually report, separately, the percentage of students with disabilities taking alternate assessments measured against alternate achievement standards defined in § 200.1(d) and the percentage of students with disabilities taking alternate assessments measured against the academic achievement standards defined under § 200.1(c).

The total estimated reporting and record keeping burden hours for SEA activity covered by the paperwork requirement is 56,264 hours for 52 SEAs. The total estimated reporting and record keeping burden hours for LEA activities covered by the paperwork requirement is 1,159,505 hours for 13,335 LEAs. The total estimated reporting and record keeping burden hours for school-level activities is 1,506,222 hours.

The Office of Management and Budget is currently reviewing the information collection pertaining to this regulation. We invite comments on the information collection in this proposed regulation by April 21, 2003. If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department

representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

## Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number: 84.010 Improving Programs Operated by Local Educational Agencies)

## List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education,

Eligibility, Family-centered education, Grant programs—education, Indians education, Institutions of higher education, Local educational agencies, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies.

Dated: March 14, 2003.

Rod Paige,

Secretary of Education.

The Secretary proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

**PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED**

1. The authority citation for part 200 continues to read as follows:

**Authority:** 20 U.S.C. 6301 through 6578, unless otherwise noted.

2. In § 200.1, redesignate paragraphs (d) and (e) as (e) and (f), revise paragraph (a)(1), and add paragraph (d) to read as follows:

**§ 200.1 State responsibilities for developing challenging academic standards.**

(a) \* \* \*

(1) Be the same academic standards that the State applies to all public schools and public school students in the State, including the public schools and public school students served under subpart A of this part, except as provided in paragraph (d) of this section;

\* \* \* \* \*

(d) *Alternate academic achievement standards.* (1) For students with the most significant cognitive disabilities who take an alternate assessment, a State may, through a documented and validated standards-setting process, define achievement standards that—

- (i) Are aligned with the State’s academic content standards; and
- (ii) Reflect professional judgment of the highest learning standards possible for those students.

(2) For purposes of subpart A of this part, the term “students with the most

significant cognitive disabilities” means students who have been identified as students with disabilities under the Individuals with Disabilities Education Act and whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean.

\* \* \* \* \*

3. In § 200.6, revise paragraph (a)(2)(ii) and add paragraph (a)(2)(iii) to read as follows:

**§ 200.6 Inclusion of all students.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(ii)(A) Alternate assessments must yield results for the grade in which the student is enrolled in at least reading/ language arts, mathematics, and, beginning in the 2007–2008 school year, science, except as provided in paragraph (a)(2)(ii)(B) of this section.

(B) For students with the most significant cognitive disabilities, alternate assessments may yield results that measure the achievement of those students against the achievement standards the State has defined under § 200.1(d).

(iii) The State must—

(A) Establish guidelines to ensure that the alternate academic achievement standards defined under § 200.1(d) are used only for students who have the most significant cognitive disabilities; and

(B) Require schools and LEAs to report separately the percentage of students with disabilities taking alternate assessments measured against—

(1) The alternate academic achievement standards defined under § 200.1(d); and

(2) The academic achievement standards defined under § 200.1(c).

\* \* \* \* \*

4. In § 200.13, redesignate paragraph (c) as paragraph (d), revise the introductory text of paragraph (b) and paragraph (b)(1), and add paragraph (c) to read as follows:

**§ 200.13 Adequate yearly progress in general.**

\* \* \* \* \*

(b) A State must define adequate yearly progress, in accordance with §§ 200.14 through 200.20, in a manner that—

(1) Except as provided in paragraph (c) of this paragraph, applies the same high standards of academic achievement to all public school students in the State;

\* \* \* \* \*

(c)(1) In calculating adequate yearly progress for schools, a State may use the alternate academic achievement standards in § 200.1(d) for students with the most significant cognitive disabilities provided that the percentage of those students at the LEA and at the State levels, separately, does not exceed 1.0 percent of all students in the grades assessed.

(2) If an LEA or State can document that the incidence of students with the most significant cognitive disabilities in the LEA or the State exceeds the limitation in paragraph (c)(1) of this section, and that circumstances exist that could explain the higher percentages such as a school, community, or health program in the area that has drawn families of students with the most significant cognitive disabilities, or such a small overall student population that only a very few students with the most significant cognitive disabilities exceed the 1.0 percent limitation, the LEA may request from the State, or the State may request from the Secretary, respectively, an exception to exceed the 1.0 percent limitation.

(3) In calculating adequate yearly progress for the State and each LEA, the State must apply grade-level academic content and achievement standards established under § 200.1(b) and (c) to assessment results of any students taking alternate assessments that exceed the percentage limitations under paragraphs (c)(1) and (2) of this section.

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