

NCLB Regulations for Modified Achievement Standards (2%)

A white paper from Pearson Educational Measurement

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June 2007



wp0702

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and research to
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On April, 19, 2007, the USED (United States Education Department) published regulations in the Federal Register (34 C.F.R. Part 200) that allow states to develop modified academic achievement standards for a subpopulation of students with disabilities, and to use the standards for making AYP (adequate yearly progress) calculations for NCLB (No Child Left Behind). The modified standards are intended to increase states' flexibility in measuring the achievement of students with disabilities beyond that offered by alternate achievement standards. The concept of modified achievement standards was developed by the USED in its proposed rulemaking for implementing NCLB regulations administered under Title I and Part B of IDEA (Individuals with Disabilities Education Act), which was released for public comment on December 15, 2005. According to USED and Secretary of Education Margaret Spellings, the impetus for allowing modified achievement standards in addition to alternate achievement standards was to permit "a limited group of students with disabilities who may not be able to reach grade-level achievement standards within the same time frame as other students, even after receiving the best-designed instructional interventions from highly trained teachers," to demonstrate growth and be considered proficient in AYP calculations (Spellings, 2005). Also contained in the proposed rulemaking was a two percent cap, such that students considered proficient or advanced against modified achievement standards could not exceed two percent of the total number of students assessed. This cap was maintained in the final legislation.

For the 2005-2006 school year, those states that expressed interest in developing modified achievement standards as well as met core requirements of NCLB were provided with three interim policy options. The first option allowed states to recalculate their AYP in schools or districts that did not make AYP goals based solely on the scores of students with disabilities (SWD). Qualifying schools or districts were allowed to increase their proficiency rates by the percent of SWD that equaled two percent of the total assessed student population. This adjusted rate was then compared to the state's AMO (annual measurable objective) to determine AYP status. Interim option 2 allowed qualifying states to include students considered proficient or advanced according to modified achievement standards on an existing assessment in their AYP calculations. Because of the two percent cap, the standards and assessments designed for this population are sometimes referred to as the "2% standards" and the "2% assessment." With the publication of the modified achievement standards regulations, states may receive flexibility in accounting for the achievement of some SWD in AYP for assessments in 2007-08 and 2008-09 only if they demonstrate that they are moving to adopt and administer assessments based on modified academic achievement standards. To assist states in the process of developing these standards and assessments, USED released non-regulatory guidance concomitant with the regulations in April 2007.

According to the federal regulations and the non-regulatory guidance, states are not required to develop modified academic achievement standards. If a state chooses not to develop modified academic achievement standards, it must still ensure that all SWD are appropriately assessed and include the assessment scores of all SWD in AYP determinations. A state may develop an assessment based on modified academic achievement standards in only one subject (e.g., reading), or in all subjects (e.g., math, science). If a state chooses to develop standards for more than one subject, the alternate assessments based on those standards must yield separate results for each subject. States are also permitted to develop modified standards for all grades, or only for select grades determined by the state.

States must follow several key criteria established in the regulations when identifying the students eligible to participate in an alternate assessment based on modified achievement standards, developing the standards, and developing the assessments based on the modified standards. The modified standards are meant to apply to students for whom the alternate achievement standards are too easy and the general standards are too hard. Participating in an assessment based on either would not accurately reflect these students' abilities or provide information that could be used to target their instruction. Ultimately, states are responsible for developing guidelines for Individualized Education Program (IEP) teams to use in determining eligibility, but the regulations and guidance provide some initial specific criteria.

If a student has an IEP, he or she has been identified under IDEA as having one or more of 13 different disabilities specified in IDEA legislation and in need of specialized instruction from highly trained teachers. This also satisfied the first criterion set by USED. Secondly, IEP teams must use multiple sources of "objective evidence that demonstrates a student's disability has precluded the student from achieving grade level proficiency," which may include academic achievement assessments such as a state assessment (USED, 2007, p.17). The student must also have been receiving appropriate instruction, including any special education or related services, yet not be on target for grade-level proficiency within the year covered by the IEP, even though the student may demonstrate significant growth. "The IEP team must use multiple valid measures of the student's progress over time in making this determination," (USED, 2007, p.17). Finally, the student's IEP must include goals based on grade-level content standards. Students eligible to participate in assessments based on modified achievement standards must have access to and be instructed on grade-level content. That content is not modified, only the expectations for mastery of that content.

These criteria provide states significant leeway in crafting the guidelines for IEP teams to follow when determining eligibility. Students must have an IEP, must be receiving appropriate instruction, and must be instructed in grade-level content, yet there must be evidence showing that they are not achieving at grade-level and that, even with significant growth during the academic year, they are not likely to achieve grade-level mastery. When read in conjunction with IDEA regulations, which were written specifically to correspond with and reinforce NCLB legislation, there are additional clues as to what evidence might be used in making these eligibility determinations. IDEA 2004

changed the criteria required for identifying students with disabilities from the significant discrepancy model to allow states to use research-based methods, specifically mentioning response-to-intervention (RTI). The RTI model relies on identifying dual discrepancies (Fuchs, Fuchs and Compton, 2005). Instead of only a significant discrepancy between IQ and achievement, RTI looks for students who are both achieving at a level much lower than their peers and growing at a lower rate than their peers. These two discrepancies can be seen in the modified achievement standards regulations in (1) the objective evidence indicating a student's disability is preventing the student from achieving grade-level proficiency and (2) in the multiple measures of progress over time that indicate a student's growth will not result in grade-level achievement within the academic year. A full interpretation of RTI, IDEA and NCLB is not within the scope of this paper, but reviewing the RTI literature is recommended for those involved in creating modified achievement standards and assessments based on them.

The regulations include requirements that states monitor the assignment of students to the assessment of modified standards, and monitor student progress and access to the general curriculum. In addition to crafting clear guidelines for IEP teams, states must also implement programs to monitor how IEP teams use the guidelines and whether they do so appropriately, to guarantee students are provided access to the general curriculum, and, finally, to ensure participation in the assessment of modified standards does not preclude students from receiving a high-school diploma.

Modified achievement standards are in between the alternate and general achievement standards on the mastery continuum. Unlike alternate achievement standards, which can be linked to grade-level content standards, modified achievement standards must be aligned with grade-level content standards and the modified assessment must cover the same grade-level content as the general assessment. There must be at least three levels of achievement with specific descriptions of the competencies associated with each level. Each level must be associated with a cut score, and the levels should be set with a documented and validated standards-setting method. These requirements apply to all Title I assessments.

According to the non-regulatory guidance, proficient performance on an assessment based on modified achievement standards, "is expected to represent understanding of grade-level content based on a less rigorous assessment," (USED, 2007, p.21). Although there are stipulations on the design of the two percent assessments, the regulations provide significant flexibility to states. The assessment must be based on grade-level academic content, although it may be less difficult than the general assessment. This, however, does not mean states can set lower standards on the general assessment for their modified standards, nor are out-of-level assessments acceptable; there must be an alternate assessment. While the assessment based on modified standards must cover the same grade-level content, the overall difficulty of the test can be reduced by replacing difficult items with simpler ones measuring the same content, or by modifying items through simplifying language and/or eliminating one incorrect answer per item for multiple choice. States are also permitted to design an entirely new assessment based on grade-level content but appropriate for students being measured against modified

achievement standards. Regardless of the method selected, the two percent alternate assessment must meet the requirements for technical quality under Title I (validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical quality) and must use a validated standards-setting process that includes broad stakeholder input including content experts and special educators.

There are additional requirements in the regulations regarding accommodations, reporting, and eligibility determinations, but the most salient criteria for developing modified achievement standards and their associated assessments have been covered. Summarily, the regulations provide additional flexibility to states for measuring the achievement of students with disabilities, particularly a sub-group that is being taught grade-level content but disabilities prevent its members from achieving on par with their grade-level peers and from progressing at a rate that would allow them to achieve grade-level mastery. For these students, modified achievement standards can be developed that are challenging, yet less difficult than grade level standards. These students can be assessed against these standards using an alternate assessment that can take the form of the general assessment with item complexity reduced, or an entirely new assessment that can incorporate performance, demonstration, and traditional multiple choice and short answer.