

## § 200.5

(2) Review and approve each LEA's academic standards and academic assessments to ensure that they—

(i) Meet or exceed the State's technical criteria; and

(ii) For purposes of this section—

(A) Are equivalent to one another in their content coverage, difficulty, and quality;

(B) Have comparable validity and reliability with respect to groups of students described in section 1111(b)(2)(C)(v) of the Act; and

(C) Provide unbiased, rational, and consistent determinations of the annual progress of LEAs and schools within the State; and

(3) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(Authority: 20 U.S.C. 6311(b)(5))

[67 FR 45041, July 5, 2002]

### § 200.5 Timeline for assessments.

(a) *Reading/language arts and mathematics.* (1) Through the 2004–2005 school year, a State must administer the assessments required under § 200.2 at least once during—

(i) Grades 3 through 5;

(ii) Grades 6 through 9; and

(iii) Grades 10 through 12.

(2) Except as provided in paragraph (a)(3) of this section, beginning no later than the 2005–2006 school year, a State must administer both the reading/language arts and mathematics assessments required under § 200.2—

(i) In each of grades 3 through 8; and

(ii) At least once in grades 10 through 12.

(3) The Secretary may extend, for one additional year, the timeline in paragraph (a)(2) of this section if a State demonstrates that—

(i) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(A) A natural disaster; or

(B) A precipitous and unforeseen decline in the financial resources of the State; and

(ii) The State can complete implementation within the additional one-year period.

(b) *Science.* Beginning no later than the 2007–2008 school year, the science

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assessments required under § 200.2 must be administered at least once during—

(1) Grades 3 through 5;

(2) Grades 6 through 9; and

(3) Grades 10 through 12.

(c) *Timing of results.* Beginning with the 2002–2003 school year, a State must promptly provide the results of its assessments no later than before the beginning of the next school year to LEAs, schools, and teachers in a manner that is clear and easy to understand.

(Authority: 20 U.S.C. 6311(b)(3))

[67 FR 45041, July 5, 2002]

### § 200.6 Inclusion of all students.

A State's academic assessment system required under § 200.2 must provide for the participation of all students in the grades assessed.

(a) *Students eligible under IDEA and Section 504—*(1) *Appropriate accommodations.* A State's academic assessment system must provide—

(i) For each student with disabilities, as defined under section 602(3) of the IDEA, appropriate accommodations that each student's IEP team determines are necessary to measure the academic achievement of the student relative to the State's academic content and achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c); and

(ii) For each student covered under section 504 of the Rehabilitation Act of 1973 (Section 504), appropriate accommodations that each student's placement team determines are necessary to measure the academic achievement of the student relative to the State's academic content and achievement standards for the grades in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c).

(2) *Alternate assessments.* (i) The State's academic assessment system must provide for one or more alternate assessments for a child with a disability as defined under section 602(3) of the Individuals with Disabilities Education Act (IDEA) whom the child's IEP team determines cannot participate in all or part of the State assessments under paragraph (a)(1) of this

section, even with appropriate accommodations.

(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 the following paragraph.

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

(iii) If a State permits the use of alternate assessments that yield results based on alternate academic achievement standards, the State must—

(A)(1) Establish and ensure implementation of clear and appropriate guidelines for Individualized Educational Program (IEP) teams to apply in determining when a child's significant cognitive disability justifies assessment based on alternate academic achievement standards; and

(2) Ensure that parents of those students are informed that their child's achievement will be based on alternate achievement standards; and

(B) Report separately, under section 1111(h)(4) of the ESEA, the number and percentage of students with disabilities taking—

(1) Alternate assessments based on the alternate academic achievement standards defined under §200.1(d);

(2) Alternate assessments based on the academic achievement standards defined under §200.1(c); and

(3) Regular assessments, including those administered with appropriate accommodations.

(C) Document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum and in assessments aligned with that curriculum;

(D) Develop, disseminate information on, and promote use of appropriate accommodations to increase the number of students with the most significant cognitive disabilities who are tested against grade-level academic achievement standards; and

(E) Ensure that regular and special education teachers and other appro-

priate staff know how to administer assessments, including making appropriate use of accommodations, for students with the most significant cognitive disabilities.

(b) *Limited English proficient students.* A State must include limited English proficient students in its academic assessment system as follows:

(1) *In general.* (i) Consistent with paragraph (b)(2) of this section, the State must assess limited English proficient students in a valid and reliable manner that includes—

(A) Reasonable accommodations; and

(B) To the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English until the students have achieved English language proficiency.

(ii) In its State plan, the State must—

(A) Identify the languages other than English that are present in the student population served by the SEA; and

(B) Indicate the languages for which yearly student academic assessments are not available and are needed.

(iii) The State—

(A) Must make every effort to develop such assessments; and

(B) May request assistance from the Secretary in identifying linguistically accessible academic assessments that are needed.

(2) *Assessing reading/language arts in English.* (i) Unless an extension of time is warranted under paragraph (b)(2)(ii) of this section, a State must assess, using assessments written in English, the achievement of any limited English proficient student in meeting the State's reading/language arts academic standards if the student has attended schools in the United States, excluding Puerto Rico, for three or more consecutive years.

(ii) An LEA may continue, for no more than two additional consecutive years, to assess a limited English proficient student under paragraph (b)(1) of this section if the LEA determines, on a case-by-case individual basis, that the student has not reached a level of English language proficiency sufficient

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to yield valid and reliable information on what the student knows and can do on reading/language arts assessments written in English.

(iii) The requirements in paragraph (b)(2)(i) and (ii) of this section do not permit an exemption from participating in the State assessment system for limited English proficient students.

(3) *Assessing English proficiency.* (i) Unless a State receives an extension under paragraph (b)(3)(ii) of this section, the State must require each LEA, beginning no later than the 2002–2003 school year, to assess annually the English proficiency, including reading, writing, speaking, and listening skills, of all students with limited English proficiency in schools in the LEA.

(ii) The Secretary may extend, for one additional year, the deadline in paragraph (b)(3)(i) of this section if the State demonstrates that—

(A) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(1) A natural disaster; or

(2) A precipitous and unforeseen decline in the financial resources of the State; and

(B) The State can complete implementation within the additional one-year period.

(c) *Migratory and other mobile students.* A State must include migratory students, as defined in Title I, part C, of the Act, and other mobile students in its academic assessment system, even if those students are not included for accountability purposes under section 1111(b)(3)(C)(xi) of the Act.

(d) *Students experiencing homelessness.* (1) A State must include homeless students, as defined in section 725(2) of Title VII, Subtitle B of the McKinney-Vento Act, in its academic assessment, reporting, and accountability systems, consistent with section 1111(b)(3)(C)(xi) of the Act.

(2) The State is not required to disaggregate, as a separate category under §200.2(b)(10), the assessment re-

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sults of the students referred to in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 6311(b)(3))

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[67 FR 45041, July 5, 2002, as amended at 67 FR 71715, Dec. 2, 2002; 68 FR 68702, Dec. 9, 2003]

### § 200.7 Disaggregation of data.

(a) *Statistically reliable information.* (1) A State may not use disaggregated data for one or more subgroups under §200.2(b)(10) to report achievement results under section 1111(h) of the Act or to identify schools in need of improvement, corrective action, or restructuring under section 1116 of the Act if the number of students in those subgroups is insufficient to yield statistically reliable information.

(2) Based on sound statistical methodology, a State must determine and justify in its State plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups under §200.2(b)(10) to report achievement results under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student.

(2) To determine whether disaggregated results would reveal personally identifiable information about an individual student, a State must apply the requirements under section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) Nothing in paragraph (b)(1) or (b)(2) of this section shall be construed to abrogate the responsibility of States to implement the requirements of section 1116(a) of the Act for determining whether States, LEAs, and schools are making adequate yearly progress on the basis of the performance of each subgroup under section 1111(b)(2)(C)(v) of the Act.

(4) Each State shall include in its State plan, and each State and LEA