

ACCOUNTABILITY FOR STUDENTS WITH DISABILITIES

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A Brief Historical Context

In 1997, IDEA was reauthorized and explicitly included language on accountability in the form of participation in assessments. While the language in IDEA '97 seemed clear as to the expectations regarding assessments, there was a major problem – the policy was far ahead of the practice and there were no specific consequences in IDEA tied to performance on those assessments. There was limited knowledge and expertise available to develop appropriate alternate assessments, and as a result, states were slow to develop these assessments. However, states did begin taking steps to open the door for students with disabilities to take regular assessments such as the New York State Regents exams – with or without accommodations as needed. As more and more states began developing content proficiency exams (e.g., the Virginia Standards of Learning) and high school exit exams, participation by students with disabilities was encouraged, but it was primarily up to the Individualized Education Program (IEP) team to ensure both participation and appropriate accommodations.

One problem soon became apparent that persists to this day: what to do in those circumstances when a student's accommodation is such that it turns into a "modification" of the exam, thus invalidating the score for that student? This issue is complicated because the answer to this question frequently depends on the test developer. As a result, an accommodation (or modification) that invalidates one test might not invalidate another test prepared by another test developer, resulting in confusion for IEP teams. This issue will be discussed in more detail later in this paper.

Accountability Under No Child Left Behind

Five years after the enactment of NCLB, there is general consensus that NCLB has resulted in a much stronger focus on accountability for the performance of students with disabilities and a much wider recognition in the education community – among both general and special educators – that students with disabilities can achieve higher levels of learning. The changes that NCLB has brought to special education are dramatic, challenging and, in some cases, unrealistic by failing to take into account the full spectrum of the disabilities that affect more than 6 million school-age children and youth.

Subgroup Size (the "n" factor)

A cornerstone of NCLB is the requirement for schools to examine the performance (e.g., proficiency) of all students. The drafters of NCLB felt that the most effective way to ensure that all students are proficient was to look at the proficiency of specific subgroups of students who, historically, have not performed well on assessments. This includes students with disabilities. Thus, NCLB introduced the concept of subgroups of students

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(e.g., minorities, limited English proficiency; students with disabilities; and low income) whose proficiency levels would be included in the calculation of adequate yearly progress (AYP), but only if the subgroup size were equal to or greater than a specific number of students as determined by the state.

The original concept behind a “minimum n size” for the subgroups was to ensure that the size of the group of students whose results were reported was large enough so that individual scores would not be recognizable and also that the size of the group would allow for statistical validity. Subgroups that do not meet the state’s minimum “n” size are not considered in reporting or analyzing individual school assessment results. But approving larger “n” sizes was one of the few areas where the U.S. Department of Education (ED) showed any flexibility in the early implementation of NCLB. Thus, today we have states with “n” sizes as low as five and as high as 100.

The “n” size debates have not always served students with disabilities well. School leaders have spent considerable time and energy trying to figure out how *not* to have a disability subgroup in their schools. In states with small “n” sizes, their efforts range from not identifying students as having a disability to refusing to admit students with disabilities into their schools, including schools that have specialized programs for specific disabilities. In states with large minimum “n” sizes, large numbers of students with disabilities are not being counted for purposes for their school’s AYP. Although a few organizations have proposed doing away with the subgroups in the reauthorization of NCLB with the intent of focusing on *every* student (e.g., by writing individual student plans for *any* student who is not proficient), there is little support for doing away with the subgroups when NCLB is reauthorized.

Assessments Under NCLB

a. Regular assessments (with or without accommodations)

All assessments under NCLB must be aligned with the state’s grade-level *content* standards (based on the curriculum for each subject at that grade), but the *achievement* standards (e.g., descriptions of what is acceptable performance) may vary. The majority of special education students do not have disabilities that impact their cognitive functioning and these students are usually capable of taking the regular assessment based on regular achievement standards—either with or without accommodations (that don’t invalidate the test results). States also have the option of providing an alternate assessment based on grade level content and grade-level achievement standards for some students, but not many have done so. The challenge for educators has been to accept this as the norm—that is, the majority of special education students should fall into this category.

One ongoing controversy has to do with accommodations that a student may have on his/her IEP. ED has clearly stated that, if a student’s accommodations are such that they invalidate the assessment given for NCLB purposes, then the student will not count as having taken the assessment. This policy has flummoxed educators who, along with their students, are caught between two conflicting policies of IDEA and NCLB. On the one hand, IDEA requires that students with disabilities have appropriate accommodations to help them achieve academically. On the other hand, NCLB policy requires students either take an assessment without accommodations or to use them and not be counted. Most educators believe that these students should be counted as

having taken the exam, even if they cannot demonstrate proficiency (because their scores are invalidated).

b. Alternate assessments based on alternate achievement standards

One of the first major implementation issues after the enactment of NCLB addressed the concern over the proficiency of students with severe cognitive disabilities. Final regulations issued in December, 2003 set a cap on the number of students (one percent) who could be counted as proficient by taking an alternate assessment based on alternate achievement standards. Some confuse this with putting a cap on the *number* of students who can take this type of assessment, which is not the case. Neither the regulations nor policy guidance issued in August 2005 actually defines who these students are except to describe them as “students with the most significant cognitive disabilities.” It has been left up to the states to provide guidance to IEP teams to make this determination.² Both the regulations and the supplementary guidance make it clear that the alternate assessments are to be linked to the regular grade-level content.

By now, this subgroup appears to be a well-accepted component of NCLB. Although participation in this type of alternate assessment is voluntary for states, virtually every state has developed guidelines for identification of these students and for alternate assessments based on alternate achievement standards.³ However, parents and advocates remain concerned that students will be inappropriately identified as part of this subgroup of students. On the other hand, educators remain concerned about the prohibition on out-of-level testing for these students who are working academically at a level far below their chronological age.

c. Alternate assessments based on modified academic achievement standards

One of the biggest controversies surrounding the participation of students with disabilities in the NCLB accountability system has to do with students who were originally called the “gap students”—those for whom neither the regular assessment (even with accommodations) nor the alternate assessment based on alternate achievement standards is an appropriate measure of their performance. This issue arose shortly after implementation of NCLB began and the controversy has not died down, even with the April 2007 release of the “two percent” regulations (which took ED two years to promulgate) under which an additional two percent of the students tested can be counted as proficient for AYP on the basis of a modified assessment based on modified achievement standards.

Several major concerns remain following the issuance of the final regulations.

Among other things, parents and disability advocates are concerned that:

- students will be inappropriately placed in this subgroup of students;

² The Notice of Proposed Rulemaking for assessing students with significant cognitive disabilities included a definition using IQ level, but it was removed from the final rule.

³ The National Center on Educational Outcomes (NCEO) has information on specific state guidance on its website at:
<http://education.umn.edu/nceo/TopicAreas/AlternateAssessments/StatesAltAssess.htm>.

- two percent of all students (e.g., 20 percent of students with disabilities) is too large a number of students to be placed into this category; and
- the guidance provided to IEP teams by states to make determinations about which assessment students should take is (or will be) insufficient.

State and local administrators are concerned that:

- the new regulation continues to prohibit all out-of-level testing;
- the costs for developing the tests are huge.

There is continued debate over which students should be counted in the two percent category. Dr. Rebecca Cort, Assistant Commissioner for Vocational and Educational Services for Individuals with Disabilities for the State of New York, testified before a House Subcommittee in March 2007 and described these students as follows: (1) those students who will take longer to reach proficiency on regular academic standards; (2) those students who, even with the best educational supports and services, will not reach proficiency on regular academic standards, but do not fit into the category of significant cognitive disability.

There is also ongoing discussion as to whether there is sufficient research to back up a subset of students with disabilities as large as 20 percent. The Aspen Institute's Commission on No Child Left Behind recommended in its report, *Beyond NCLB*, that this group of students be cut back to one percent, and claimed that it could not find research to support the two percent category. Most educational administrators support leaving the percentage at two percent, especially now that they may begin developing assessments consistent with the new regulations. There is agreement on both sides of this issue that more research is needed.

The regulations and guidance are clear that decisions around which assessment a student should take is to be made by the IEP team, which includes the student's parents. It will be the responsibility of states to provide appropriate guidance and training to assure that appropriate decisions are made.

The debate over out-of-level testing

ED has been clear from the beginning of NCLB that out-of-level testing could no longer be used and virtually all states are in compliance on this. However, the debate still rages over whether all students with disabilities should be assessed—with a regular or alternate assessment—based on grade-level content. Dr. Cort's statement before the House Education and Labor subcommittee also addressed the issue of out-of-level testing. She said that if a student's IEP calls for a specific instructional level that may not be consistent with the student's chronological age (e.g., a fifth grader being instructed on third grade material), that the student should be evaluated at that instructional level. Her views are consistent with many administrators at the state and local levels.

They argue that while the two percent regulations acknowledge that a student taking an alternate assessment based on modified academic achievement standards may not master all of the grade-level content, it is not clear as to when that student would master the remaining content from that grade. For example, if a student in the third grade takes an alternate assessment based on modified academic achievement standards, and then moves to the fourth grade the following year, when would the student master the

remaining portion of the third grade curriculum? Once in the fourth grade, the student would be assessed against fourth grade content standards without having mastered all of the third grade content standards. Over a period of time, the student's knowledge gap could increase significantly. With the prohibition on out-of-level testing, this remains one of the biggest concerns of state and local administrators with respect to NCLB implementation.

On the other end of the spectrum, opponents of out-of-level assessments maintain that students should be instructed and assessed at their chronological grade level using available assessments and that the failure to do so implies that students are not being held to the highest academic standards or exposed to the general education curriculum. They argue that under the one and two percent regulations, students may not master all grade-level content and that, except for specific skills that have prerequisites that would continue to have to be taught as access skills, there will be some standards that these students may master at a later time or not at all.

The Impact of IDEA 2004 on Accountability

Accountability for students with disabilities remains firmly rooted in both NCLB and IDEA. Some have argued that the two laws inherently conflict. While the "fit" may have some jagged edges, administrators must continue to walk the fine line between the individual accountability mandated by IDEA and the group accountability required by NCLB.

Accountability at the State Level

In the section of the law pertaining to state responsibility (612), the state education agency (SEA) is required, "to the extent feasible, use universal design principles in developing and administering any assessments..." Implementing this provision in conjunction with the assessment provisions of NCLB can help ensure that students with disabilities have appropriate assessments that (perhaps) will not be rendered invalid by the student's accommodations. This is just one manner in which NCLB and IDEA can work together.

Accountability at the Local District Level

Local school districts have the option of using up to 15% of their federal funds to provide early intervening services (EIS) for at-risk students who have not been identified as having disabilities. In cases where a disproportionate number of minority students have been identified for special education, the school district must implement this provision of the law. Providing appropriate professional development is another local education agency responsibility. Together, these two provisions can also have a profound impact of the performance of students with disabilities under the NCLB accountability system. They can help to ensure that students with disabilities are taught by highly qualified teachers. And early intervening can help provide more intense services to students who need them, thus keeping them from being identified as having a disability and/or ensuring their proficiency on assessments.

Accountability at the School Building Level

The IEP Team has a critical role to play under both IDEA and NCLB: under IDEA, it must ensure that the student is receiving appropriate educational supports and services; and under NCLB, the IEP team is responsible for determining the most appropriate assessment for a student, keeping in mind that the student should be held to the highest expectations. Parents and advocates have expressed concern about IEP teams making the right decisions (e.g., choosing the appropriate assessment, ensuring that the student's teachers have high expectations for the student). Building level administrators must take responsibility for ensuring that their IEP team members have appropriate training to carry out the new aspects of their jobs with respect to both IDEA and NCLB.

A Few Final Thoughts

Many administrators, teachers and advocates believe that NCLB has had a more profound impact on students with disabilities than IDEA because of its emphasis on including these students in the general education curriculum and in the accountability system. Now is the time to develop true partnerships between all levels of education—federal, state and local (both general and special education)—parents and disability advocates that is focused on achieving the best possible outcomes for students with disabilities in school and as full participants in their communities as adults. The partnership should focus on capitalizing on the strengths of each individual school and how to build upon those strengths when improvement is needed.

References

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The No Child Left Behind Act of 2001, Pub. L. No. 107-110 Stat. 1425 (2002).