



**MODIFIED ACADEMIC  
ACHIEVEMENT STANDARDS**

*Non-Regulatory Guidance*



**July 20, 2007**

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## INTRODUCTION

This guidance provides States with detailed information about how to use and implement modified academic achievement standards. The development of modified academic achievement standards for certain students with disabilities and the use of those standards for making adequate yearly progress (AYP) decisions is authorized under Department regulations (34 C.F.R. Part 200) published in the Federal Register on April 9, 2007. These regulations build upon flexibility that currently is available for measuring the achievement of students with the most significant cognitive disabilities under the regulations in 34 C.F.R. Part 200 implementing Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). Those earlier Title I regulations permit a State to develop alternate academic achievement standards for students with the most significant cognitive disabilities and to include those students' proficient and advanced scores on alternate assessments based on alternate academic achievement standards in measuring AYP, subject to a cap of 1.0 percent of all students assessed at the State and district levels. Since those regulations were published, the experiences of many States, as well as recent research, indicate that, in addition to students with the most significant cognitive disabilities, there is a small group of students whose disability has precluded them from achieving grade-level proficiency and whose progress is such that they will not reach grade-level proficiency in the same time frame as other students. Before the regulations about modified academic achievement standards were developed, these students could take either a grade-level assessment or an alternate assessment based on alternate academic achievement standards. Neither of these options provides an accurate assessment of what these students know and can do. A grade-level assessment is too difficult and, therefore, does not provide data about a student's abilities or information that would be helpful in guiding instruction. An alternate assessment based on alternate academic achievement standards is too easy and is not intended to assess a student's achievement across the full range of grade-level content. Such an assessment, therefore, would not provide teachers and parents with information to help these students progress toward grade-level achievement.

The regulations on modified academic achievement standards permit a State, as part of its State assessment and accountability system under Title I of the ESEA, to adopt such standards and to develop an assessment aligned with those standards that is appropriately challenging for this group of students. This assessment must be based on modified academic achievement standards that cover the same grade-level content as the general assessment. The expectations of content mastery are modified, not the grade-level content standards themselves. The requirement that modified academic achievement standards be aligned with grade-level content standards is important; in order for these students to have an opportunity to achieve at grade level, they must have access to and instruction in grade-level content. The regulations include a number of safeguards to ensure that students assessed based on modified academic achievement standards have access to grade-level content so that they can work toward grade-level achievement; for example, their individualized education programs (IEPs) must include goals that are based on grade-level content standards and provide for monitoring of the students' progress in achieving those goals. In addition to ensuring that students with disabilities are appropriately assessed, these regulations also allow teachers and schools to receive credit for the work that they do to help these students progress toward grade-level achievement.

**A. INCLUDING STUDENTS WITH DISABILITIES**  
**IN STATE ASSESSMENT AND ACCOUNTABILITY SYSTEMS**

**A-1. Why should students with disabilities be included in State assessment and accountability systems?**

There are three basic reasons why including students with disabilities in State assessment and accountability systems is critical. First, it is established law. The Individuals with Disabilities Education Act (IDEA) and Title I of the ESEA each require all students with disabilities to be included in State assessment systems. In addition, the prohibition against exclusion from participation or denial of benefits to, or discrimination against, individuals with disabilities contained in section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act applies to State assessment and accountability systems. ESEA (section 1111(b)(2)) further requires that assessment results for all students (and students in specified subgroups, including students with disabilities) who have been enrolled in a school for a full academic year be used in calculating AYP for the school, and that the assessment results of all students who have been in a local educational agency (LEA) for a full academic year be used in calculating AYP for the LEA and the State. In addition to State assessments, the IDEA (section 612(a)(16)) requires that all students with disabilities participate in district-wide assessment programs and that alternate assessments be provided for students with disabilities who cannot participate in grade-level assessments, even with accommodations.<sup>1</sup> Alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities were authorized under Department regulations (34 C.F.R. Part 200) published on December 9, 2003. Final regulations published on April 9, 2007 provide States with the option to assess an additional small group of students with disabilities with an alternate assessment based on modified academic achievement standards.

[<http://www.ed.gov/legislation/FedRegister/finrule/2007-2/040907a.html>]

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<sup>1</sup> Section 612(a)(16)(A) of the IDEA requires that students with disabilities participate in all State and district-wide assessments. If a State has a more comprehensive program of assessments than required by NCLB, the IDEA requires that students with disabilities participate in those assessments.

Second, students with disabilities benefit instructionally from participating in State and district-wide assessments. Including students with disabilities in accountability systems has resulted in parents, teachers, and administrators paying more attention to grade-level standards and ensuring that students with disabilities have access to the general curriculum and an opportunity to learn grade-level content. Together, the IDEA and NCLB work to provide the specialized and individualized instruction and school accountability that is critical to improving achievement for students with disabilities.

Third, to ensure that appropriate resources are dedicated to helping students with disabilities succeed, appropriate measurement of their achievement needs to be part of the accountability system. By including all students in State accountability systems, schools pay attention to the performance and progress of all students; educating students with disabilities becomes a shared responsibility of both general and special education teachers. Too often in the past, students with disabilities were excluded from assessment and accountability systems, and the consequence was that they did not receive the academic attention and resources they deserved. When students with disabilities are part of the accountability system, educators' expectations for these students also are more likely to increase. In such a system, educators realize that students with disabilities can and do learn to high levels, just like students who do not have disabilities.

**A-2. How may students with disabilities be included in State assessment systems?**

The assessment options for students with disabilities include the following:

- Participation in a general grade-level assessment.
- Participation in a general grade-level assessment with accommodations.
- Participation in an alternate assessment based on grade-level academic achievement standards.
- Participation in an alternate assessment based on modified academic achievement standards.
- Participation in an alternate assessment based on alternate academic achievement standards.

We expect that most students with disabilities will participate in a general grade-level State assessment with or without accommodations. For students with disabilities who cannot participate in a general assessment, even with accommodations, the IDEA requires States to develop and implement alternate assessments. The Title I regulations published on December 9, 2003 permit States to develop alternate academic achievement standards for students with the most significant cognitive disabilities and to include the proficient and advanced scores on assessments based on those standards in calculating AYP. With the publication of the final regulations on modified academic achievement standards, Title I and the IDEA give States the option of developing modified academic achievement standards for a small group of students with disabilities who can make significant progress, but who may not reach grade-level achievement in the time frame covered by their IEP. The regulations permit States to include the proficient and advanced scores on alternate assessments based on modified academic achievement standards in calculating AYP. A State is not required to develop an assessment based on alternate academic achievement standards or modified academic achievement standards. However, a State must ensure that all students with disabilities are appropriately assessed and must provide at least one alternate assessment, unless all students with disabilities can be appropriately assessed with the general assessment.

**A-3. Who makes the decision about how a student with disabilities participates in the State assessment system?**

A student's individualized education program team (IEP Team), which includes the student's parent, determines how the student will participate in the State assessment system and what, if any, accommodations are needed for the student to take the general assessment. Students with disabilities who are not able to show what they know and can do on the general grade-level assessment, even with appropriate accommodations, must be assessed with an alternate assessment. Alternate assessments may be based on grade-level academic achievement standards, modified academic achievement standards, or alternate academic achievement standards.

**A-4. What is the difference between academic content standards and academic achievement standards?**

Academic Content Standards. Academic content standards are statements of the knowledge and skills that schools are expected to teach and students are expected to learn. They must contain coherent and rigorous content and encourage the teaching of advanced skills. Effective academic content standards are clear and specific and give teachers, students, and parents sufficient direction to guide teaching and learning. Thus, academic content standards should be written in clear, jargon-free, and straightforward prose that is accessible to a wide range of audiences.

Academic Achievement Standards. Academic achievement standards are explicit definitions of how students are expected to demonstrate attainment of the knowledge and skills reflected in the content standards. A score from a test aligned with the content standards is one method of defining an achievement standard. Academic achievement standards should be conceptualized as a system that includes the following components:

- Achievement levels--Labels for levels of student achievement that convey the degree of student achievement in a given content area. Each achievement level encompasses a range of student achievement.
- Achievement descriptors--Descriptions of the content-based competencies associated with each level of achievement. Achievement descriptors describe what students at each achievement level know and can do.
- Cut scores--Scores on an assessment that separate one level of achievement from another.

**A-5. What methods should a State use to ensure that its assessment system is accessible for students with disabilities?**

The Title I regulations in 34 C.F.R. §200.2(b)(2) require a State’s assessment system to be “designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency.” To meet this requirement, a State should field-test its assessments by sampling the type of students who are expected to participate in the final assessments. A State also should define precisely what the assessment is intended to measure and develop accessible test forms that have bias-free test items; simple, clear instructions and procedures; maximum readability and comprehensibility; and optimal legibility.

Accessible assessments also allow for a wide range of accommodations in test administration so that the vast majority of students with disabilities can participate in grade-level assessments. Further, a State must develop and widely disseminate guidance about accommodations for each State and district-wide assessment that may be used and must ensure that this information is communicated clearly to IEP Teams and school-level educators. The general idea is that a State has a responsibility to create a testing environment that ensures that students participate in assessments in ways that produce valid and meaningful results.

**A-6. Do States need to develop two alternate assessments--one based on grade-level academic achievement standards and one based on alternate or modified academic achievement standards?**

Under the IDEA, unless all students with disabilities can be appropriately assessed using the general assessment with or without accommodations, a State must develop at least one alternate assessment. A State's alternate assessment or assessments must permit students with disabilities who cannot participate in the general assessment, even with accommodations, to participate in the State's assessment system. Therefore, a State should decide if one or multiple alternate assessments are necessary to assess appropriately the group of students, if any, who are not able to participate in the State's general assessment. In making this decision, a State would need to consider the extent to which accommodations on the general assessment are allowable and sufficiently comprehensive to enable a wide range of students with disabilities to participate.

**B. MODIFIED ACADEMIC ACHIEVEMENT STANDARDS**

**B-1. What is a modified academic achievement standard?**

A modified academic achievement standard is an expectation of performance that is challenging for eligible students, but may be less difficult than a grade-level academic achievement standard. Modified academic achievement standards must be aligned with a State's academic content standards for the grade in which a student is enrolled. Thus, only the academic achievement standards are modified, not the content standards on which those modified academic achievement standards are based. Although the assessment and modified academic achievement standards for a particular grade must be

challenging for eligible students, they may be less difficult when compared with the general test and grade-level academic achievement standards.

The characteristics of modified academic achievement standards are the same as those described in the Title I assessment regulations for grade-level achievement standards. That is, they must be aligned with the State's academic content standards; describe at least three levels of achievement; include descriptions of the competencies associated with each achievement level; and include assessment scores (cut scores) that differentiate among the achievement levels and describe the rationale and procedures used to determine each achievement level.

**B-2. How do modified academic achievement standards compare with alternate academic achievement standards?**

The achievement expectations for modified academic achievement standards are less difficult than grade-level academic achievement standards, but more demanding than alternate academic achievement standards. Modified academic achievement standards, like grade-level academic achievement standards, are based on a State's approved grade-level academic content standards for the grade in which a student is enrolled. Modified academic achievement standards are not based on academic content standards that have been modified or restricted. Alternate academic achievement standards, on the other hand, are based on a very limited sample of content that is linked to grade-level content standards but may not fully represent grade-level content and may include substantially simplified content.

**B-3. May a State define modified academic achievement standards for grade clusters (e.g., grades 3-5, 6-9, or 10-12), rather than for individual grades?**

No. Modified academic achievement standards are intended to be challenging for students whose disabilities have prevented them from attaining grade-level proficiency. These students must have access to a curriculum based on grade-level content standards and, therefore, must be assessed with a measure that is also based on grade-level content standards. This is very different from an alternate assessment based on alternate academic achievement standards, for which States are permitted to define alternate academic achievement standards for grade clusters, rather than for individual grades.

Alternate academic achievement standards are for students with the most significant cognitive disabilities, many of whom are in un-graded classes. When examined across grades, alternate academic achievement standards do not generally show the same clearly defined differences in cognitive complexity as do modified or grade-level academic achievement standards. Therefore, while it is reasonable to allow alternate academic achievement standards to be defined for grade clusters, modified academic achievement standards must be defined for individual grades.

**B-4. Are States required to develop modified academic achievement standards?**

No. States have the option of developing modified academic achievement standards. While all students can learn challenging content, evaluating that learning through the use of modified academic achievement standards is appropriate only for a small group of students with disabilities whose progress in response to appropriate instruction, including special education and related services designed to address the students' individual needs, is such that they are not likely to achieve grade-level proficiency within the school year covered by their IEPs. If a State chooses not to develop modified academic achievement standards, it must still ensure that all students with disabilities are appropriately assessed and include the assessment scores of all students with disabilities in AYP determinations.

**C. STUDENTS ASSESSED BASED ON  
MODIFIED ACADEMIC ACHIEVEMENT STANDARDS**

**C-1. Who is eligible to participate in an alternate assessment based on modified academic achievement standards?**

To be eligible to participate in an alternate assessment based on modified academic achievement standards, a student must be a student with a disability under section 602(3) of the IDEA and may be in any of the disability categories listed in the IDEA. A student's IEP Team, which includes the student's parent, determines how the student will participate in State and district-wide assessments. If a State chooses to develop modified academic achievement standards, the State must establish clear and appropriate criteria for IEP Teams to apply in determining whether a student should be

assessed based on modified academic achievement standards in one or more subjects. These criteria must include, but are not limited to, the following:

(1) There must be objective evidence demonstrating that the student's disability has precluded the student from achieving grade-level proficiency. Such evidence may include the student's performance on State assessments or other assessments that can validly document academic achievement.

(2) The student's progress to date in response to appropriate instruction, including special education and related services designed to address the student's individual needs, is such that, even if significant growth occurs, the IEP Team is reasonably certain that the student will not achieve grade-level proficiency within the year covered by the student's IEP. The IEP Team must use multiple valid measures of the student's progress over time in making this determination.

(3) The student's IEP must include goals that are based on the academic content standards for the grade in which the student is enrolled.

It is a State's responsibility to establish and monitor implementation of clear and appropriate guidelines for IEP Teams to use when deciding if an alternate assessment based on modified academic achievement standards is justified for an individual student. These guidelines should provide parameters and direction to ensure that students are not assessed based on modified academic achievement standards merely because of their disability category or their racial or economic background.

**C-2. May a student take an alternate assessment based on modified academic achievement standards in one subject and take the general assessment in another subject?**

Yes. A student's IEP Team, which includes the student's parent, decides how the student will be assessed for each applicable subject area. Thus, an IEP Team could decide that a student should take the alternate assessment based on modified academic achievement standards in one subject (e.g., reading) and the general assessment in another subject (e.g., math).

**C-3. How often must an IEP Team consider whether a student should be assessed based on modified academic achievement standards?**

An IEP Team must make the decision about how a student participates in annual State and district-wide assessments each year. We expect that there will be students with disabilities who take an alternate assessment based on modified academic achievement standards one year, make considerable progress during the school year, and then take the general grade-level assessment the following year. Therefore, an IEP Team must consider a student's progress annually based on multiple, objective measures of the student's achievement before determining that the student should be assessed based on modified academic achievement standards.

**C-4. What kinds of data can be used as evidence that a student should be assessed based on modified academic achievement standards?**

In order to ensure that students with disabilities are not inappropriately held to modified academic achievement standards, it is important to ensure that the data demonstrating a student's progress (or lack of progress) are objective and valid. An IEP Team must be able to examine the data and be reasonably certain that, given the student's progress to date, the student is not likely to reach grade-level proficiency within the year covered by his or her IEP.

A student's performance over time on a State's Title I general assessment is one important way to document the student's lack of progress based on grade-level academic achievement standards. Students should have the opportunity to show what they know and can do on an assessment that is based on grade-level academic achievement standards. An IEP Team should not simply assume that the nature of a student's disability is such that the student is not able to perform at grade level. Other State assessments (e.g., end-of-course assessments) or district-wide assessments are also ways to document the student's lack of progress. In addition, data gathered from classroom assessments or other formative assessments may be used. Data from classroom assessments may be useful, for example, in documenting the performance of a student who is new to a State or who has not participated in multiple State or district-wide assessments (e.g., a third-grade student in a State that begins testing at grade 3). There is

no set length of time during which the data must be gathered, but there must be enough time to document the progress (or lack of progress) in response to appropriate instruction. A student's performance on one State Title I assessment, for example, would not be sufficient documentation to show progress or lack of progress. The key is that there must be sufficient data for an IEP Team to be reasonably certain that, even if significant growth occurs, the student will not achieve grade-level proficiency within the year covered by the student's IEP.

**C-5. Must all students who are assessed based on modified academic achievement standards be eligible to receive a regular high school diploma?**

No. Nothing in NCLB requires or encourages States to attach student-level consequences, such as obtaining a regular high school diploma, to student achievement on Title I assessments. Such "high stakes" decisions, along with high school graduation requirements, are made at the State or local level, generally by State legislatures and State or local school boards.

Section 200.1(f)(2)(iii) requires States to ensure that students who take an alternate assessment based on modified academic achievement standards are not precluded from attempting to complete the requirements for a regular high school diploma. Depending on how a State defines its modified academic achievement standards, students who participate in alternate assessments based on modified academic achievement standards may be a diverse group of students. Some students, for example, may take an alternate assessment based on modified academic achievement standards in one subject and take the general assessment in another subject. Other students may take an alternate assessment based on modified academic achievement standards for one or two years and take the general assessment the next year. Students who participate in an alternate assessment based on modified academic achievement standards must not be prohibited automatically from attempting to meet the requirements for a regular high school diploma.

**D. ALTERNATE ASSESSMENTS BASED ON  
MODIFIED ACADEMIC ACHIEVEMENT STANDARDS**

**D-1. What are the characteristics of alternate assessments based on modified academic achievement standards?**

Alternate assessments based on modified academic achievement standards are intended to be challenging for a limited group of students whose disability has prevented them from attaining grade-level proficiency. These students must have access to a curriculum based on grade-level content standards and, therefore, must be assessed with a measure that is also based on grade-level content standards, although the assessment may be less difficult than the general assessment. The content standards are not modified, but the achievement expectations are less difficult than those on the general test. This means that the same content is covered in the test, but with less difficult questions overall.

When used as part of a State assessment system, alternate assessments based on modified academic achievement standards should have an explicit structure, guidelines for which students may participate, clearly defined scoring criteria and procedures, and a report format that communicates student performance in terms of the academic achievement standards defined by the State. The requirements for high technical quality set forth in 34 C.F.R. §§200.2(b) and 200.3(a)(1), including validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards, apply to alternate assessments based on modified academic achievement standards, just as they do to any other assessment under Title I.

**D-2. How do alternate assessments based on modified academic achievement standards differ from alternate assessments based on alternate academic achievement standards?**

An alternate assessment based on modified academic achievement standards differs from an alternate assessment based on alternate academic achievement standards for students with the most significant cognitive disabilities in the following ways:

(1) The nature of alignment with grade-level content standards. An alternate assessment based on alternate academic achievement standards must be linked to grade-

level content but need not fully represent grade-level content. A State may develop “extended content standards” that substantially restrict or simplify grade-level content in order to make it accessible to students with the most significant cognitive disabilities, and use these extended content standards as the basis for an alternate assessment based on alternate academic achievement standards. In contrast, alignment with grade-level content standards is the foundation of an alternate assessment based on modified academic achievement standards. An alternate assessment based on modified academic achievement standards must cover the same grade-level content as the general assessment.

(2) Proficiency. The type of student work that defines proficient performance on an alternate assessment based on alternate academic achievement standards is substantially different from the type of student work that defines proficient performance on grade-level academic achievement standards. Proficient performance on an alternate assessment based on modified academic achievement standards, in contrast, is expected to represent understanding of grade-level content based on a less rigorous assessment.

Although an alternate assessment based on modified academic achievement standards differs in significant ways from an alternate assessment based on alternate academic achievement standards, there are also several similarities:

Standard setting. Both assessments require that a documented and validated standards-setting process be used to establish the achievement standards. Documentation must include a detailed description of the procedures used to set the standards and the qualifications of the panelists.

Technical quality. Both assessments must meet the same standards for technical quality. States must document the validity, reliability, and fairness/accessibility of these assessments.

Reporting results. The number and percentage of students taking each of the assessments must be publicly reported. Performance results of all students with disabilities also must be reported. Parents must receive additional information explaining the results.

Appendix A summarizes the characteristics of the three types of alternate assessments for students with disabilities: alternate assessments based on alternate academic achievement standards, modified academic achievement standards, and grade-level academic achievement standards.

### **D-3. What is a documented and validated standards-setting process?**

The regulations require use of a “documented and validated standards-setting process” to establish modified academic achievement standards. Evidence of the procedures employed by a State must be submitted to the Department for peer review and approval. Appropriate documentation includes a detailed description of the materials and activities used to establish the modified academic achievement standards, including target content and scoring criteria. Documentation also should address the training provided for the participants, the qualifications of any judges involved and how they were selected, and the final results. A validated standards-setting process is one that follows clearly defined procedures that have been tried and evaluated and are appropriate for the format of the assessment. Assessment professionals are familiar with a variety of standards-setting techniques that have been developed and applied to large-scale assessments, including, but not limited to, reasoned judgment, contrasting groups, modified Angoff, bookmarking or item mapping, body of work, and judgmental policy capturing.

Once the academic achievement standards have been defined for a particular test, they are applied consistently to all students taking the test so that the meaning of “proficient” is not whimsical, not individually defined, and not determined by an individual teacher or scorer.

### **D-4. Why is an alternate assessment based on modified academic achievement standards referred to as an “alternate assessment,” rather than as a “modified assessment?”**

The term “alternate assessment” accurately conveys that an assessment based on modified academic achievement standards is an “alternate” to the general assessment. The term “modified assessment” is generally used by psychometricians to refer to an assessment that has been altered in such a way so as to render the final score invalid.

Therefore, using the term “modified assessment” would be confusing to those in the assessment field and also inaccurately convey the purpose of the assessment.

**D-5. Does an alternate assessment based on modified academic achievement standards need to have the same number of achievement levels as the general assessment?**

An alternate assessment based on modified academic achievement standards must have at least three achievement levels. If a State’s general assessment has six achievement levels, the alternate assessment based on modified academic achievement standards does not need to have all six achievement levels. In such cases, decreasing the number of achievement levels to three, instead of six, would allow the design of a test with fewer items, while covering the same grade-level content standards as the general assessment.

**D-6. May a State develop an alternate assessment based on modified academic achievement standards for some, but not all, grades?**

Yes. An alternate assessment based on modified academic achievement standards is optional for States. No State is required to provide an alternate assessment based on modified academic achievement standards. A State may also choose to develop an alternate assessment based on modified academic achievement standards only for specific grades. Therefore, depending on how a State’s assessment system is structured and the extent to which it has used “universal design” principles in the development of its assessments and accommodations, the State may, for example, determine that an alternate assessment based on modified academic achievement standards is needed for grades 6 through 8. A State also may decide first to develop an alternate assessment based on modified academic achievement standards for high school and later develop such an assessment for the rest of the grades.

**D-7. If a State decides to develop modified academic achievement standards, must it develop an alternate assessment for reading/language arts, mathematics, and (beginning in the 2007-08 school year) science?**

No. The development of modified academic achievement standards and assessments based on those standards is optional. A State, therefore, may develop an alternate assessment based on modified academic achievement standards in only one subject (e.g., reading), but not in all subjects. However, if a State develops an alternate assessment based on modified academic achievement standards for more than one subject, it must yield separate results for each of the subjects tested.

**D-8. May a State modify an existing assessment or must it develop a completely new assessment to measure student achievement based on modified academic achievement standards?**

A State may modify an existing assessment or develop a new assessment. The State should decide what makes sense given the assessments that exist within its assessment system.

**D-9. May a State set a lower cut score on its general assessment and use this as its alternate assessment based on modified academic achievement standards?**

No. The purpose of developing an alternate assessment based on modified academic achievement standards is to create an accurate measure of achievement for students whose disability precludes them from reaching proficiency on grade-level content within the current year. These students must have access to grade-level academic content; however, an accurate and meaningful measure of their achievement will require a different definition of proficiency in the form of a more appropriate test and related academic achievement standards. Setting a lower cut score on the general assessment does nothing to make the test more accessible or understandable.

**D-10. May an out-of-level assessment be used as an alternate assessment based on modified academic achievement standards?**

No. An out-of-level assessment may not be used as an alternate assessment based on modified academic achievement standards because it is, by definition, not aligned with grade-level content standards. Out-of-level testing means assessing students enrolled at a specific grade level with tests designed for students enrolled at lower grade levels. By definition, an out-of-level assessment does not meet the requirements of an alternate

assessment based on modified academic achievement standards because it does not measure grade-level content standards for the grade in which a student is enrolled. According to the National Center on Educational Outcomes, research does not support the use of out-of-level test scores from State assessments when measuring student proficiency on standards for the grade in which a student is enrolled.

**D-11. If a State has developed a “vertical scale” that relates scores from out-of-level assessments to its grade-level academic content and achievement standards, may the State count the scores of those assessments in AYP calculations?**

No. AYP calculations are based on the proportion of students who have demonstrated proficiency on an assessment based on either the State’s grade-level academic achievement standards, modified academic achievement standards, or alternate academic achievement standards. The use of a vertical scoring scale is not sufficient to document that an assessment, other than a grade-level assessment, has met the statute’s requirements.

**D-12. What are ways to decrease the difficulty of an alternate assessment based on modified academic achievement standards, while maintaining coverage of the grade-level content standards?**

Grade-level content standards are the foundation of an alternate assessment based on modified academic achievement standards. Beyond this essential requirement, a State may use a variety of strategies to design an alternate assessment based on modified academic achievement standards. We only can provide examples of how this might be done; it is not our intent, in providing this guidance, to limit the approaches States might take in developing an alternate assessment based on modified academic achievement standards. Some States have suggested replacing the most difficult items on the general test with simpler items appropriate for the grade level, while retaining the same coverage of the content standards. Others have suggested modifying the same items that appear on the grade-level assessment by simplifying the language of the item or eliminating a “distracter” in multiple-choice items (e.g., having 3 options to choose from, instead of 4). States may choose to develop a unique assessment based on grade-level content standards that provides flexibility in the presentation of test items, for example, by using

technology to allow students to access items via print, spoken, and pictorial form. Or States may permit students to respond to test items by dictating responses or using math manipulatives to illustrate conceptual or procedural knowledge. Of course, a State is responsible for ensuring that the design of the assessment and the method of administration do not compromise the validity and reliability of the test results. Regardless of whether a State chooses to construct a unique assessment or to adapt its general assessment, an alternate assessment based on modified academic achievement standards must be aligned with State content standards in the same manner as the general assessment; it must define the modified academic achievement standards in a manner consistent with professional standards; and it must report results in terms of the modified academic achievement standards with at least three levels of achievement defined.

**D-13. What are examples of how one State has decreased the difficulty of a general assessment to develop an alternate assessment based on modified academic achievement standards?**

One State used the same structure as its general assessment in developing its alternate assessment based on modified academic achievement standards. Its alternate assessment based on modified academic achievement standards is a multiple-choice test that assesses English/language arts and math separately and is based on grade-level content standards. Several changes to the general assessment were made to simplify the assessment, while maintaining alignment with grade-level content standards. Following are some of the ways that this State's alternate assessment based on modified academic achievement standards differs from its general assessment:

- The test items are less complex on the alternate assessment. For example, a student may be required to use conjunctions to connect ideas in a sentence rather than transition sentences to connect ideas in a passage of prose.
- There are fewer passages in the alternate assessment's reading assessment. For example, at grades 3 and 4 there are two narrative and two expository passages on the alternate assessment versus three narrative and two expository passages on the general assessment.

- There are three answer choices (i.e., two “distracters”) on the alternate assessment, compared to four answer choices (i.e., three “distracters”) on the general assessment.
- Students may take the alternate assessment over as many days as necessary.

**D-14. May a State allow a student to use an accommodation on the alternate assessment based on modified academic achievement standards that, if used in the general grade-level assessment, would invalidate the score?**

No. An alternate assessment based on modified academic achievement standards must cover the same grade-level content standards as the general assessment but may include characteristics such as shorter or less difficult questions or shorter reading passages. An accommodation that invalidates results on the general assessment by changing the underlying concepts tested would also change the conceptual framework of the alternate assessment based on modified academic achievement standards.

**D-15. Must a State’s alternate assessment based on modified academic achievement standards be reviewed by the U.S. Department of Education?**

An alternate assessment based on modified academic achievement standards developed for Title I purposes must be reviewed through the Department’s peer review of State assessment systems. A State must demonstrate that its assessment meets the statutory requirements for validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards.

**D-16. May a State continue to use the “interim flexibility” until its assessment based on modified academic achievement standards is approved?**

The interim flexibility provided in the 2004-05, 2005-06 and 2006-07 school years ends with the 2006-07 school year. The regulations, however, provide a transition period of two school years (2007-08 and 2008-09) to give States time to develop alternate assessments based on modified academic achievement standards. Beginning with the 2007-08 school year, a State that moves expeditiously to develop an alternate assessment based on modified academic achievement standards may request to use a 2.0 percent proxy or a mathematical adjustment to the proficiency rate in order to provide additional

credit to schools or districts that missed the AYP target solely based on the achievement of students with disabilities.

The two-year limit on transition flexibility does not prohibit a State that does not meet the Secretary's eligibility criteria from developing an alternate assessment based on modified academic achievement standards. Likewise, a State may develop an alternate assessment based on modified academic achievement standards any time after the end of the transition flexibility (i.e., the 2008-09 school year).

**D-17. What are the eligibility criteria that a State must meet in order to receive “transition flexibility”?**

In accordance with 34 C.F.R. §200.20(g), the Secretary has determined that a State must meet the following criteria to be approved to implement transition flexibility:

- A State must have an approved assessment system, including an approved alternate assessment. This means that the status of the system must be *Full Approval*, *Full Approval with Recommendations*, or *Approval Expected*.
- A State must provide evidence that the achievement of students with disabilities is improving.
- Statewide assessment participation rates for students with disabilities, for purposes of measuring AYP, must be at or above 95 percent.
- A State with Special Conditions regarding assessments on its IDEA, Part B grant will not be eligible unless such conditions are resolved by the time the transition flexibility will be used.
- A State must present evidence of substantial progress in developing an alternate assessment based on modified academic achievement standards. (There will be a higher bar for evidence of progress for 2008-09 than in 2007-08.) This evidence must include:
  - A description of the progress the State has made to date in developing the assessment.
  - Guidelines for IEP Teams to use in determining which students are eligible for an assessment based on modified academic achievement standards.

- Test blueprints or item development in preparation of the field trial, or evidence of the field trial or operational trial.
- A timeline and implementation plan that shows how the State will work to complete the alternate assessment and ensure effective implementation (e.g., IEP Team guidelines, standards-based IEP goals, training for IEP Teams).
- A Request for Proposals, contract, or evidence of funds spent or to be spent on developing an alternate assessment based on modified academic achievement standards.

## **E. IEP GOALS BASED ON GRADE-LEVEL CONTENT STANDARDS**

### **E-1. What are IEP goals based on grade-level content standards?**

IEP goals based on grade-level academic content standards are goals that address the skills specified in the content standards for the grade in which a student is enrolled. Incorporating State standards in IEP goals is not a new idea. Many educators have been working toward incorporating State standards in IEP goals since the reauthorization of the IDEA in 1997, which required that the IEPs of students with disabilities support their involvement and progress in the general curriculum. Some States already require standards-based IEP goals and have developed extensive training materials and professional development opportunities for staff to learn how to write IEP goals that are tied to State content standards.<sup>2</sup>

### **E-2. Why are IEP goals based on grade-level content standards required for students who are assessed based on modified academic achievement standards?**

The primary reason for requiring IEP goals based on grade-level academic content standards is to ensure that students who participate in an assessment based on modified academic achievement standards receive instruction in grade-level content so that they can make progress towards meeting grade-level proficiency. The requirement focuses the IEP Team and the student on grade-level content and the student's achievement level relative to those content standards, as well as the educational supports

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<sup>2</sup> Ahearn, E. (2006). Standards-based IEPs: Implementation in Selected States. National Association of State Directors of Special Education, 1800 Diagonal Road, Suite 320, Alexandria, VA 22314.

and services that the student needs to reach those standards. McLaughlin, Nolet, Rhim, and Henderson (1999) reported that special education teachers indicated that, when IEPs were aligned with State content standards, students with disabilities had improved exposure to subject matter and received focused instruction to meet challenging goals.<sup>3</sup> In addition, they noted that collaboration between special and general education teachers was greater when they worked with a student whose IEP goals were aligned with State content standards.

**E-3. Does the requirement for IEP goals based on grade-level content standards change the IEP requirements under the IDEA?**

Under section 614(d)(1)(A)(i)(II) of the IDEA, a student's IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum, and to meet each of the student's other educational needs that result from the student's disability. This requirement applies to all students with disabilities, regardless of how they participate in State and district-wide assessments. The requirement that IEP goals be based on grade-level content standards merely provides more specificity about a student's involvement and participation in the general curriculum.

**E-4. When must an IEP Team develop IEP goals based on grade-level content standards in order for a student to be assessed based on modified academic achievement standards?**

Once an IEP Team determines that a student will be assessed based on modified academic achievement standards, the IEP Team must ensure that the student's IEP includes goals that address the content standards for the grade in which the student is enrolled. We anticipate that decisions about how a student will participate in State and district-wide assessments will be made at the student's annual IEP meeting, which will give the IEP Team time to develop IEP goals that are based on grade-level content standards before the student takes an alternate assessment based on modified academic

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<sup>3</sup> McLaughlin, M. J., Nolet, V., Rhim, L. M., & Henderson, K. (1999). Integrating standards, including all students. *Teaching Exceptional Children*, 31(3), 66-71.

achievement standards. This will not only help ensure that the student receives instruction based on grade-level content standards after the student participates in an alternate assessment based on modified academic achievement standards, but also will help ensure that a student has had an opportunity to learn grade-level content prior to taking an alternate assessment based on modified academic achievement standards.

**E-5. Are IEP goals based on grade-level content standards only appropriate for students taking an alternate assessment based on modified academic achievement standards?**

IEP goals based on grade-level content standards are appropriate for a wide range of students with disabilities, including students with the most significant cognitive disabilities. It is not our intent to limit the implementation of IEP goals based on grade-level content standards to students participating in an alternate assessment based on modified academic achievement standards or those achieving close to grade level. The regulations require a student's IEP to include goals based on grade-level content standards only for the subjects to be assessed based on modified academic achievement standards. For example, if a student will be assessed based on modified academic achievement standards in reading and math, IEP goals for reading and math must be based on grade-level content standards. However, we encourage all IEP goals that are related to academic achievement to be based on grade-level content, especially since the vast majority of students with disabilities will be assessed based on those standards.

**E-6. Does the IDEA require short-term objectives or benchmarks in the IEPs of students who participate in alternate assessments based on modified academic achievement standards?**

No. Under section 614(d)(1)(A)(I)(cc) of the IDEA, only the IEPs of students with the most significant cognitive disabilities who participate in alternate assessments based on alternate academic achievement standards must include a description of benchmarks or short-term objectives. Alternate assessments based on modified academic achievement standards are not the same as alternate assessments based on alternate academic achievement standards, and, thus, students who take those assessments are not required to have short-terms objectives or benchmarks in their IEPs.

**E-7. Must the guidelines for developing IEP goals based on grade-level content standards be in a separate document from the guidelines for IEP Teams to determine who can be assessed based on modified academic achievement standards?**

Not necessarily; it is up to each State to determine how best to establish guidelines that meet the requirements of the regulations.

**F. GUIDELINES FOR IEP TEAMS**

**F-1. If a State decides to develop modified or alternate academic achievement standards, what guidelines must be in place for IEP Teams?**

A State that develops modified or alternate academic achievement standards must provide clear and appropriate guidelines for IEP Teams to apply in determining which students will be assessed based on alternate or modified academic achievement standards. At a minimum, these guidelines must: (a) inform IEP Teams that students eligible to be assessed based on alternate or modified academic achievement standards may be from any of the disability categories listed in the IDEA; (b) provide IEP Teams with a clear explanation of the differences between the general grade-level assessment and those based on alternate or modified academic achievement standards, including any effects of State and local policies on a student's education that might result from taking an assessment based on alternate or modified academic achievement standards; and (c) ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

**F-2. Are there additional requirements for a State that develops modified academic achievement standards?**

A State that implements an assessment based on modified academic achievement standards also must:

(1) Establish and monitor implementation of clear and appropriate guidelines for IEP Teams to apply in developing and implementing IEPs that include IEP goals that are

based on the academic content standards for the grade in which a student is enrolled and are designed to monitor the student's progress in achieving the student's standards-based goals;

(2) Ensure that a student has access to the curriculum, including instruction, for the grade in which the student is enrolled;

(3) Ensure that a student is not precluded from attempting to complete the requirements, as defined by the State, for a regular high school diploma; and

(4) Ensure that each IEP Team reviews annually its decision to assess a student based on modified academic achievement standards to ensure that those standards remain appropriate.

**F-3. Do the regulations on modified academic achievement standards affect the role of the IEP Team in making decisions about appropriate assessments?**

An IEP Team's responsibility is unchanged by the regulations on modified academic achievement standards. A student's IEP Team continues to determine how the student will participate in State and district-wide assessments. If a State chooses to develop modified academic achievement standards and alternate assessments based on those standards, the IEP Team will have an additional assessment to choose from when determining the most appropriate assessment for the student.

**F-4. What safeguards are in the regulations to ensure that a student assessed based on modified academic achievement standards has access to grade-level content?**

The regulations on modified academic achievement standards include a number of safeguards to ensure that a student with disabilities who is assessed based on modified academic achievement standards has access to grade-level content so that the student has the opportunity, over time, to reach grade-level academic achievement standards. The safeguards for the student that are included in the regulations include the following:

- Modified academic achievement standards must be aligned with a State's academic content standards and a student must be assessed on the content standards for the grade in which the student is enrolled (§200.1(e)(1)(i));

- A student’s IEP must include goals that are based on the academic content standards for the grade in which the student is enrolled and be designed to monitor the student’s progress in achieving the standards-based goals (§200.1(e)(2)(iii) and (f)(2)(i)(A));
- A State must establish and monitor implementation of clear and appropriate guidelines for an IEP Team to apply in developing and implementing the IEP of a student assessed based on modified academic achievement standards (§200.1(f)(2)(ii));
- A State’s guidelines must ensure that a student who is assessed based on modified academic achievement standards has access to the curriculum, including instruction, for the grade in which the student is enrolled (§200.1(f)(2)(iii)); and
- A State must ensure that a student who takes an assessment based on modified academic achievement standards is not precluded from attempting to complete the requirements, as defined by the State, for a regular diploma (§200.1(f)(2)(iii)).

**F-5. What information must be included in the accommodation guidelines for IEP Teams?**

A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the appropriate use of accommodations in State (or, in the case of the LEA, district-wide) assessments. The guidelines must: (a) identify the accommodations for each assessment that do not invalidate the test score; and (b) instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

**F-6. What happens if an IEP Team decides that a student should use an accommodation in an assessment that results in an invalid test score?**

If a student uses an accommodation that results in an invalid score, the student is considered to be a non-participant under both Title I and the IDEA. If a student takes an assessment with an accommodation that invalidates the score, the assessment is no longer

measuring the concepts it was intended to measure. Therefore, the score does not accurately reflect the student's academic achievement.

**F-7. May an accommodation that would invalidate a test score be used during classroom instruction?**

There is nothing in the IDEA or Title I final regulations that prohibits the use of accommodations in classroom instruction that, if used in a State or district-wide assessment, would invalidate a student's score. Under the IDEA, such classroom accommodations are considered supplementary aids and services. It is the IEP Team's responsibility to identify the supplementary aids and services that are necessary for a student to advance toward attaining his or her annual goals, to be involved in and make progress in the general curriculum, and to be educated alongside his or her non-disabled peers.

**F-8. Why do States vary in terms of the accommodations that are provided to students with disabilities? That is, why is the same accommodation allowed in one State, but not in another?**

Each State is responsible for determining, for each assessment, whether the use of a particular accommodation would change what the test is intended to measure and, thus, invalidate the score. Because standards and assessments differ greatly from one State to the next, an accommodation that is permitted in one State may not be permitted in another State. A State must provide evidence for the Department's peer review of State-wide assessment systems under Title I that its State assessments are valid and reliable for the purposes for which the assessments are used, and are consistent with relevant, nationally recognized professional and technical standards.

**G. TWO (2.0) PERCENT CAP**

**G-1. What is the 2.0 percent cap?**

Under the final regulations on modified academic achievement standards, when measuring AYP, States and LEAs have the flexibility to count--in determining AYP--the proficient and advanced scores of students who take alternate assessments based on modified academic achievement standards--so long as the number of those proficient and

advanced scores does not exceed 2.0 percent of all students in the grades assessed (about 20 percent of students with disabilities) at the LEA and State levels. The 2.0 percent cap is necessary to ensure that modified academic achievement standards are used appropriately. The 2.0 percent cap, in conjunction with the requirements for State guidelines in §200.1(f), is meant to discourage the inappropriate assessment of students based on modified academic achievement standards.

**G-2. How is the 2.0 percent cap calculated?**

The 2.0 percent cap is based on the number of students enrolled in the tested grades. This means that if a State provides an alternate assessment based on modified academic achievement standards in only three grades, the 2.0 percent calculation is based on the number of students in those three grades. The number of students in a tested grade is based on enrollment at the time of testing, including students who are publicly placed in a private school to receive special education services.

**G-3. May SEAs or LEAs exceed the 2.0 percent cap?**

Under specific limited conditions, States and LEAs may exceed the 2.0 percent cap. (See Table 1.) The 2.0 percent cap may be exceeded only if a State or LEA is below the 1.0 percent cap for students with the most significant cognitive disabilities who take alternate assessments based on alternate academic achievement standards. For example, if the number of proficient and advanced scores on the alternate assessment based on alternate academic achievement standards is 0.8 percent, the State or LEA could include 2.2 percent of the proficient and advanced scores on alternate assessments based on modified academic achievement standards in calculating AYP.

The rationale for permitting States or LEAs to exceed the 2.0 percent cap under these limited circumstances is to encourage IEP Teams to consider an assessment based on modified academic achievement standards for students who might otherwise be assessed based on alternate academic achievement standards. Although modified academic achievement standards may be less challenging than grade-level academic achievement standards, they are more challenging than alternate academic achievement standards and, thus, may be more appropriate for some students who are currently taking alternate assessments based on alternate academic achievement standards. In addition,

the policy provides flexibility for States that may design their alternate academic achievement standards for a very small population of students with disabilities.

Table 1. When May a State or LEA Exceed the 1.0 and 2.0 Percent Caps?

	<b>Alternate Academic Achievement Standards--1.0 Percent Cap</b>	<b>Modified Academic Achievement Standards--2.0 Percent Cap</b>	<b>Alternate and Modified Academic Achievement Standards--3.0 Percent Cap</b>
<b>State</b>	Not permitted.	Only if State is below 1.0 percent cap, but cannot exceed 3.0 percent cap.	Not permitted.
<b>LEA</b>	Only if granted an exception by the SEA.	Only if LEA is below 1.0 percent cap, but cannot exceed 3.0 percent cap.	Only if granted an exception to the 1.0 percent cap by the SEA, and only by the amount of the exception.

**G-4. Does anything in the regulation prevent an LEA from identifying significantly more than 2.0 percent of its students to be assessed based on modified academic achievement standards?**

The 2.0 percent cap is a cap on the number of proficient and advanced scores that can be counted toward AYP, and not a cap on the number of students with disabilities who may take an alternate assessment based on modified academic achievement standards. If the number of proficient and advanced scores from assessments based on modified academic achievement standards exceeds 2.0 percent of all the students tested, the additional scores would be counted as non-proficient in calculating AYP, which would be to the detriment of the school and the LEA. We do not believe that the number of students who are eligible to take an alternate assessment based on modified academic achievement standards is significantly greater than 2.0 percent. Therefore, an LEA that assesses significantly more than 2.0 percent of its students with an alternate assessment based on modified academic achievement standards should prompt a review by the State

of the implementation of its guidelines to ensure that the LEA was not inappropriately assigning students to take that assessment.

**G-5. May a State count more than 3.0 percent of the proficient and advanced scores from alternate assessments based on alternate and modified academic achievement standards when calculating AYP?**

No. Under no circumstances may the percentage of proficient and advanced scores on alternate assessments based on alternate and modified academic achievement standards exceed 3.0 percent at the State level. The vast majority of students with disabilities can and should be assessed based on grade-level achievement standards and, therefore, it is not necessary or appropriate at the State level for the proficient and advanced scores of more than 3.0 percent of students who are assessed based on alternate or modified academic achievement standards to be counted in AYP determinations.

**G-6. May a State request an exception to the 1.0 percent cap?**

No. A State no longer may request an exception from the Department to exceed the 1.0 percent cap. With the implementation of the final regulations on modified academic achievement standards, States now have sufficient flexibility to measure the achievement of more students with disabilities appropriately with alternate assessments. A State may *not*, for example, include 1.3 percent of proficient and advanced scores on alternate assessments based on alternate academic achievement standards and 1.7 percent of proficient and advanced scores on alternate assessments based on modified academic achievement standards in calculating AYP. However, as noted in question G-3, if the number of proficient and advanced scores on alternate assessments based on alternate academic achievement standards in a State is less than 1.0 percent, the State may include more than 2.0 percent of proficient and advanced scores based on modified academic achievement standards in calculating AYP, so long as the total number of proficient and advanced scores on alternate assessments based on alternate and modified academic achievement standards does not exceed 3.0 percent.

**G-7. May a State grant an exception to an LEA to exceed the 1.0 percent cap?**

Yes. A State may grant permission to an LEA to exceed the 1.0 percent cap. In such cases, the LEA may exceed 3.0 percent, but only by the amount of the exception to the 1.0 percent cap. For example, if a State allows an LEA to exceed the 1.0 percent cap by 0.10 percent, the LEA may count a total of 3.1 percent of the proficient and advanced scores on alternate assessments based on alternate and modified academic achievement standards in AYP calculations. A State does not need to apply for an exception from the Department in order to grant exceptions to its LEAs.

It is important to continue to allow States to permit an exception to the 1.0 percent cap at the LEA level because there may still be significant local variation in the number of students with the most significant cognitive disabilities. Some LEAs may provide special services for students with the most significant cognitive disabilities in one or a few schools. Additionally, the enrollment patterns of students across LEAs might not result in an even distribution of students with the most significant cognitive disabilities among schools, even if there are no special centers for these students. In these cases, a 1.0 percent cap on the number of proficient and advanced scores on alternate assessments based on alternate academic achievement standards would prove unworkable at a school level and not be in the best interests of those students.

If an LEA requests an exception to the 1.0 percent cap, the LEA should document that it is fully and effectively implementing the State guidelines listed in 34 C.F.R. §200.1(f) to demonstrate that it is appropriately including students with disabilities in its assessment system. As States consider whether to allow any exceptions, however, they should be mindful of how individual LEA exceptions will affect the overall 1.0 percent cap that applies at the State level, as well as the requirement that no more than 3.0 percent of proficient and advanced scores from alternate assessments based on alternate and modified academic achievement standards be included in AYP calculations.

Exceptions should not be granted on the basis of poor or inaccurate identification or the inappropriate use of alternate or modified academic achievement standards. Instead, exception requests might be granted if an LEA addresses satisfactorily certain issues, such as incidence rates of students with the most significant cognitive disabilities; circumstances in the LEA that would explain the higher incidence rates (such as

specialized health programs or facilities); and implementation of safeguards that limit the inappropriate use of alternate and modified academic achievement standards. These safeguards include implementing State guidelines through the IEP process; informing parents about the actual achievement of students; reporting, to the extent possible, on test-taking patterns; including students with disabilities in the general curriculum; providing information about the use of appropriate accommodations; and ensuring that teachers and other educators participate in appropriate professional development about alternate assessments.

**G-8. When during the school year may a State grant an exception to an LEA?**

A State may grant an exception to the 1.0 percent cap to an LEA before or after assessments are administered for a particular year. The granting of an exception must not delay the identification of schools for improvement.

**G-9. If an LEA receives an exception, how often must it reapply for that exception?**

As stated in 34 C.F.R. §200.13(c)(5)(ii), a State must review regularly whether an LEA's exception to the 1.0 percent cap is still warranted. This does not mean the LEA must submit an exception request each year. Instead, the State should monitor the implementation of this exception on a regular basis and determine its necessity.

**G-10. Does the 2.0 percent cap limit access of students with disabilities to an alternate assessment based on modified academic achievement standards?**

No. The regulations do not limit the number of students with disabilities who may take an alternate assessment based on modified academic achievement standards when that is appropriate. They address only the inclusion of proficient and advanced scores from alternate assessments based on modified academic achievement standards in AYP calculations.

**G-11. Do States need to amend their accountability plans in order to use modified academic achievement standards?**

Yes. A State should amend its accountability plan if it decides to assess students based on modified academic achievement standards. A letter sent by Deputy Secretary Raymond Simon to chief State school officers on February 7, 2007 provides guidance on

submitting plan amendments. It can be found at the following website:  
<http://www.ed.gov/policy/elsec/guid/secletter/070207.html>.

**G-12. How will the Department monitor the implementation of the regulations on modified academic achievement standards?**

Just as has been done with the implementation of the 1.0 percent regulation, the Department's Office of Special Education Programs (OSEP) and the Student Achievement and School Accountability Programs in the Office of Elementary and Secondary Education (OESE) will coordinate their efforts to ensure that the regulations are appropriately implemented. Through their peer review of standards and assessments, OESE will ensure that modified academic achievement standards and State guidelines meet the requirements of the regulations and that the assessments, based on those standards, meet the requirements for high technical quality that are required of all assessments under NCLB. In addition, OESE will amend its on-site monitoring protocol to ensure that State guidelines for selecting students to be assessed based on modified academic achievement standards are being appropriately applied.

OSEP also will amend its monitoring protocols and desk audits to include a review of how States are ensuring that districts and schools are implementing the requirements of the regulation, including, for example, ensuring that IEP goals are based on grade-level content standards and that IEP Teams are informed of the differences between an alternate assessment based on modified academic achievement standards or alternate academic achievement standards and an assessment based on grade-level academic achievement standards. In addition, each year OSEP will review State-submitted data in two areas that are particularly relevant to implementation of these regulations: (1) the participation and performance of students with disabilities in assessments and (2) least restrictive environment (LRE). (These data are part of the State Performance Plan (SPP) for which the States are required to report annually.) OSEP reviews data submitted for the Annual Performance Report (APR) to identify potential issues for its "focused monitoring" process. If the data indicate that there are issues with either LRE or assessment participation, the implementation of the regulations based on modified academic achievement standards would likely be part of focused monitoring reviews.

OSEP and OESE staff will continue to share information about their findings so that efforts are coordinated and not duplicated.

## **H. IMPLEMENTATION OF THE 2.0 PERCENT CAP:**

### **ADEQUATE YEARLY PROGRESS**

#### **H-1. How does the 2.0 percent cap work in practice?**

The 2.0 percent cap works in the same manner as the 1.0 percent cap for alternate assessments based on alternate academic achievement standards. Both caps (calculated at the State and LEA levels) are based on the number of students enrolled in the grade(s) tested. The following example illustrates how the policy should work in practice for the 2.0 percent cap. As determined by the 2.0 percent cap, an LEA with 10,000 students in the grades assessed may count for AYP purposes no more than 200 students scoring proficient or advanced on an alternate assessment based on modified academic achievement standards. This LEA has 250 students taking the alternate assessment based on modified academic achievement standards, but only 200 students score at the proficient or advanced levels on this assessment. Since the number of proficient scores does not exceed the cap, all such scores from the alternate assessment based on modified academic achievement standards may be included as proficient or advanced in the relevant schools' AYP determinations. The remaining 50 non-proficient scores would also be included in the schools' AYP calculations. Because only 200 of the 250 of the students assessed with an alternate assessment based on modified academic achievement standards are proficient, the LEA would not exceed the cap.

#### **H-2. What if a State or LEA has more than 2.0 percent of its students scoring proficient or advanced on an alternate assessment based on modified academic achievement standards?**

The 2.0 percent cap (calculated at the State and LEA levels) is a limit on the number of proficient or advanced scores based on modified academic achievement standards that may count as proficient or advanced for AYP purposes. The following example illustrates the implications for an LEA where more than 2.0 percent of its students score proficient on an alternate assessment based on modified academic

achievement standards. The 2.0 percent cap requires that an LEA with 10,000 students in the grades assessed may count for AYP purposes the scores of no more than 200 students scoring proficient or advanced on an alternate assessment based on modified academic achievement standards. If 250 students in this LEA score proficient or advanced on an alternate assessment based on modified academic achievement standards (and the LEA reached the 1.0 percent cap on alternate assessments based on alternate academic achievement standards), the LEA must:

(1) Determine which 50 proficient and advanced scores will be considered not proficient, and

(2) Count these excess 50 scores as not proficient in each subgroup that each student is in (e.g., all students, a racial/ethnic group, and students with disabilities) at the school, LEA, and SEA levels.

### **H-3. What principles should guide the implementation of the 2.0 percent cap?**

All scores based on modified academic achievement standards must be included in school, LEA, and State AYP calculations. Moreover, an individual student's results from such assessments must be counted in all appropriate subgroups. Each student's score used for calculating AYP must remain the same at each level of the educational system--school, LEA, and State--and for each subgroup of which the student is a member for which AYP is calculated. In circumstances in which more than 2.0 percent of the students score proficient or advanced on an alternate assessment based on modified academic achievement standards in an LEA, the State should work with the LEA to determine which proficient scores are counted as non-proficient at schools in the LEA responsible for students who took an alternate assessment based on modified academic achievement standards. Regardless of how an individual student's score is treated in AYP calculations, the parent must be informed of the actual academic achievement level earned by his or her student.

### **H-4. What methods may a State use to determine which scores to count as not proficient?**

The models that States use to distribute the proficient and advanced scores that exceed the 1.0 percent cap also can be used to distribute the proficient and advanced scores that exceed the 2.0 percent cap. A paper written by Tiffany Martinez and Ken Olsen of the Mid-South Regional Resource Center funded by the Office of Special Education Programs, Distribution of Proficient Scores that Exceed the 1% Cap: Four Possible Approaches, explains methods used by some States to handle the situation. This paper is found at the Education Resources Information Center (ERIC) at [www.eric.ed.gov](http://www.eric.ed.gov). (The paper is ERIC# ED484423.)

All proficient and advanced scores based on modified academic achievement standards that exceed 2.0 percent of total enrollment in the grades tested must be counted as non-proficient against grade-level standards in AYP calculations. These scores are hereinafter referred to as “redistributed non-proficient scores.”

In the hypothetical LEA described in H-2 there are four schools responsible for students who take alternate assessments based on modified academic achievement standards.

- In school A, there are 100 proficient scores.
- In school B, there are 100 proficient scores.
- In school C, there are 50 proficient scores.
- In school D, there are 50 proficient scores.

Because more than 2.0 percent of this LEA’s students scored proficient based on modified academic achievement standards, 100 of the 300 proficient scores must be counted as non-proficient at schools A, B, C, and/or D. If the State were to use a proportional method for redistributing the non-proficient scores, the outcome might look like this:

- In school A, there are 66 proficient scores, and 34 redistributed non-proficient scores.
- In school B, there are 66 proficient scores, and 34 redistributed non-proficient scores.

- In school C, there are 34 proficient scores, and 16 redistributed non-proficient scores.
- In school D, there are 34 proficient scores, and 16 redistributed non-proficient scores.

If a State exceeds the cap, it would need to follow a similar process and determine which scores to count as non-proficient among LEAs and schools that administer alternate assessments based on modified academic achievement standards. The Martinez and Olsen paper presents several models for redistributing the non-proficient scores.

**H-5. For a State that develops both an alternate assessment based on alternate academic achievement standards and an alternate assessment based on modified academic achievement standards, how does the State or one of its LEAs determine the percentage of proficient and advanced scores on those assessments that must be distributed as non-proficient scores?**

Table 2 provides hypothetical examples of four LEAs and shows the percentage of proficient and advanced scores on either the alternate assessments that must be redistributed as non-proficient scores. Please note that the same policy should apply to the State and LEA levels *unless* the LEA has an exception from the State. (See question G-7.)

Table 2. Examples Showing the Percentage of Proficient and Advanced Scores to be Redistributed in a State that Implements Both Modified and Alternate Academic Achievement Standards

	Percent of all students in grades assessed achieving proficient or advanced scores on alternate assessments <i>not</i> based on grade level achievement standards		Proficient and advanced scores that must be redistributed as non-proficient scores
	Alternate academic achievement standards--1.0 percent cap	Modified academic achievement standards--2.0 percent cap	
<b>LEA A</b> Exceeds the 2.0 percent cap	0.9 percent	2.6 percent	0.5 percent
<b>LEA B</b> Exceeds the 2.0 percent cap	0.7 percent	2.3 percent	0
<b>LEA C</b> Exceeds the 1.0 percent cap	1.4 percent	1.5 percent	0.4 percent
<b>LEA D</b> Exceeds both the 1.0 and 2.0 percent caps	1.3 percent	2.6 percent	0.9 percent (0.3 percent must be from scores based on alternate academic achievement standards)

- LEA A does not exceed the 1.0 percent cap; it is 0.1 percent under the cap. However, LEA A exceeds the 2.0 percent cap by 0.6 percent. Since an LEA (or State) may exceed the 2.0 percent cap by the amount it is below the 1.0 percent cap, the LEA only needs to redistribute 0.5 percent of its proficient and advanced scores as non-proficient scores (0.9 percent + 2.6 percent = 3.5 percent - 3.0 percent = 0.5 percent).
  - One can also look at this example in terms of numbers rather than percentage of scores. If LEA A has 1000 students, up to 10 students may be counted as proficient or advanced on an alternate assessment based on alternate academic achievement standards (1.0 percent cap). In this example, LEA A has 9 students who have scored proficient or advanced on this assessment. Up to 20

students may be counted as proficient or advanced on an alternate assessment based on modified academic achievement standards (2.0 percent cap). LEA A has 26 students scoring proficient or advanced on this assessment. The LEA has a total of 35 students scoring proficient or advanced on both alternate assessments and may only use 30 of those scores as proficient or advanced in AYP calculations; it must redistribute 5 scores as non-proficient scores.

- LEA B is under the 1.0 percent cap by 0.3 percent and over the 2.0 percent cap by 0.3 percent. An LEA or State may exceed the 2.0 percent cap so long as it does not have more than a total of 3.0 percent proficient and advanced scores from both alternate assessments. In this case, LEA B does not exceed that 3.0 percent limit so it does not need to redistribute any scores.
- LEA C exceeds the 1.0 percent cap by 0.4 percent, but is under the 2.0 percent cap by 0.5 percent. An LEA or State may not exceed the 1.0 percent cap (unless the LEA has an exception from the State), even if it has less than 2.0 percent of proficient or advanced scores on the alternate assessment based on modified academic achievement standards. Therefore LEA C has 0.4 percent of its proficient and advanced scores from the alternate assessment based on alternate academic achievement standards that must be redistributed as non-proficient scores.
- LEA D exceeds both the 1.0 percent and 2.0 percent caps (by 0.3 and 0.6 percent, respectively). Therefore, LEA D has 0.9 percent of its proficient and advanced scores from its alternate assessments that must be redistributed as non-proficient scores. (1.3 percent + 2.6 percent = 3.9 percent minus 3.0 percent = .9 percent). Note that 0.3 percent must be from scores from alternate assessments based on alternate academic achievement standards since LEA D was 0.3 percent over the 1.0 percent cap (unless the LEA has an exception from the State).

**H-6. Which educational agency--State or local--is responsible for determining how to count proficient scores that exceed the 2.0 percent cap at the LEA level?**

NCLB requires States to establish and monitor implementation of their accountability system. Within that system, LEAs are responsible for identifying schools in need of improvement and for making AYP determinations. (See section 1116(a)(1).)

In practice, the educational agency that carries out this responsibility may differ depending upon how assessments are administered, scored, and analyzed. Thus, each State defines the general procedures for dealing with scores above the 2.0 percent cap at the local level and may make the LEA responsible for identifying which individual scores are to be treated as non-proficient in AYP calculations.

Ultimately, the process of counting all scores, including those that are to be included as not proficient because an LEA has exceeded the cap, should be methodical and consistent with State regulations and guidelines. The Martinez and Olsen paper (referred to in H-4) describes a few options that States and LEAs can consider when establishing this system. An LEA must follow the State's procedures for allocating the scores among its schools. A State might identify a particular method that all LEAs must use, or a State might permit LEAs to select among several methods approved by the State.

**H-7. Does the 2.0 percent cap apply only to LEAs in which the “students with disabilities” subgroup exceeds the State’s minimum group size?**

No. It applies to any LEA that has at least one student who takes an alternate assessment based on modified academic achievement standards. Students taking such assessments do not vanish if there is not a “students with disabilities” subgroup--these students appear in a number of other categories, such as the “all students” and major racial/ethnic groups.

**H-8. How must a student with a disability who is placed in a private school by an LEA be included in the assessment and accountability system?**

A student with a disability who is publicly placed in a private school must be included in the assessment and accountability system in three ways. First, under 34 C.F.R. §300.146(b), the student must be provided an education that meets the standards that apply to education provided by the State and LEA. Therefore, the State's academic standards apply to the student and the student must participate in the State's academic assessment system. Second, the assessment results from a student with disabilities who is placed in, or referred to, a private school or facility by a public agency as a means of providing special education and related services must be included in LEA and State AYP

decisions. The assessment scores must be used in determining AYP for the LEA that placed the student in the private school or facility and for the State. Third, the student is considered to be enrolled in the LEA when determining how many scores can be included, subject to the 2.0 percent cap, as proficient or advanced based on modified academic achievement standards.

## **I. REPORTING**

### **I-1. How must results from alternate assessments based on modified academic achievement standards be reported?**

NCLB requires two kinds of assessment reporting: (1) reports to parents, teachers, and principals, and (2) reports to the public.

(1) Reports to parents, teachers, and principals: NCLB requires that a State's assessment system, including its alternate assessments based on alternate and modified academic achievement standards, produce individual student interpretive, descriptive, and diagnostic reports that allow parents, teachers, and principals to understand and address the specific academic needs of students, and include information regarding achievement on academic assessments based on the State's academic achievement standards. For these reports, States and LEAs must report the actual scores received by students who participate in alternate assessments based on modified academic achievement standards, even if a proficient or advanced score has been reallocated as not proficient for AYP purposes.

(2) Public reports: NCLB also requires that States and LEAs prepare and disseminate public report cards.<sup>4</sup> Two of the main sections of these public report cards are those that present (A) assessment data and (B) accountability data.

(A) The assessment data in public report cards must include results for all students in the grades tested in the State, not just those students enrolled for a full academic year. In the assessment data section of public report cards, States and LEAs must report the actual scores received by students who participate in

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<sup>4</sup> The confidentiality requirements in §300.642(a) of the IDEA regulations and §200.7(b) of the Title I regulations require that these public reports may not result in disclosure of data identifiable to an individual child.

alternate assessments based on modified academic achievement standards, even if proficient and advanced scores have been redistributed as not proficient for AYP purposes.

(B) In the accountability section of public report cards, States and LEAs must report the student assessment scores used by the State and LEAs to determine AYP. For this section of the public report card, States and LEAs must report the scores of students taking an alternate assessment based on modified academic achievement standards as redistributed after considering the 2.0 percent cap.

**I-2. What other information must States and LEAs report regarding students taking alternate assessments based on alternate or modified academic achievement standards?**

As part of the Consolidated State Performance Report (CSPR) under the ESEA, States must annually report information regarding the testing of students with disabilities: for both reading/language arts and mathematics. States must report both the total number and percentage of students with disabilities who participated in: (1) the general grade-level assessment with or without accommodations; (2) an alternate assessment based on grade-level achievement standards; (3) an alternate assessment based on modified academic achievement standards; and (4) an alternate assessment based on alternate academic achievement standards.

The reporting requirements under the IDEA are similar. States must make available to the public with the same frequency and in the same detail as they report on the assessment of non-disabled students the number of students with disabilities participating in general assessments, and the number of those students who were provided accommodations in order to participate in those assessments; the number of students with disabilities, if any, who participate in an alternate assessment based on grade-level academic achievement standards; the number of students with disabilities, if any, who are assessed based on modified academic achievement standards; and the number of students with disabilities, if any, who are assessed based on alternate academic achievement standards. A State must also report, compared to the achievement results for all children, the performance results of students with disabilities on all assessments

including general assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards.

**I-3. What information do LEAs need to communicate to parents about alternate and modified academic achievement standards?**

A State must ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their student's achievement will be measured based on alternate or modified academic achievement standards. In addition, the State must provide parents and other members of the IEP Team a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate or modified academic achievement standards. The information must include any effect of State and local policies on a student's education resulting from taking an assessment based on alternate or modified academic achievement standards. This is particularly important when only satisfactory performance on a general assessment would qualify a student for a regular high school diploma.

If a student's scores are counted as not proficient instead of proficient because the LEA or State exceeds the 2.0 percent cap, parents must receive the student's actual score. Further, LEAs or States are not required to inform parents that a student's score was counted differently for AYP purposes.

**Appendix A**  
**Characteristics of Alternate Assessments**

	<b>Alternate Assessment based on Alternate Academic Achievement Standards (1%)</b>	<b>Alternate Assessment based on Modified Academic Achievement Standards (2%)</b>	<b>Alternate Assessment based on Grade-Level Academic Achievement Standards</b>
<b>Achievement standard</b>	<ul style="list-style-type: none"> <li>• An alternate academic achievement standard is an expectation of performance that differs in complexity from a grade-level achievement standard, usually based on a very limited sample of content that is linked to but does not fully represent grade-level content.</li> <li>• May be defined for grade clusters, e.g., 3-5.</li> </ul>	<ul style="list-style-type: none"> <li>• A modified academic achievement standard is aligned to grade-level content standards for the grade in which a student is enrolled and challenging for eligible students, but may be less difficult than grade-level achievement standards.</li> <li>• Achievement standards must include 3 levels of performance, cut scores that distinguish one level from another, and descriptions of the content-based competencies associated with each level.</li> <li>• Must be defined grade-by-grade.</li> </ul>	<ul style="list-style-type: none"> <li>• A grade-level academic achievement standard defines a level of “proficient” performance equivalent to grade-level achievement on the State’s regular assessment.</li> <li>• Achievement standards must include 3 levels of performance, cut scores that distinguish one level from another, and descriptions of the content-based competencies associated with each level.</li> <li>• Must be defined grade-by-grade.</li> </ul>
<b>Setting standards</b>	<ul style="list-style-type: none"> <li>• Requires a “documented and validated standard setting process.” A detailed description of the procedures used, the qualifications of panelists (which must include persons knowledgeable about the State’s content standards and experienced in standards setting and special educators who are most knowledgeable about students with disabilities), the final cut scores, and performance level descriptors must be submitted for peer review.</li> </ul>	<ul style="list-style-type: none"> <li>• Requires a “documented and validated standard setting process.” A detailed description of the procedures used, the qualifications of panelists (which must include persons knowledgeable about the State’s content standards and experienced in standards setting and special educators who are most knowledgeable about students with disabilities), the final cut scores, and performance level descriptors must be submitted for peer review.</li> </ul>	<ul style="list-style-type: none"> <li>• Requires a “documented and validated standard setting process.” A detailed description of the procedures used, the qualifications of panelists (which must include persons knowledgeable about the State’s content standards and experienced in standards setting and special educators who are most knowledgeable about students with disabilities), the final cut scores, and performance level descriptors must be submitted for peer review.</li> </ul>

<b>Content standards on which the test is based</b>	<ul style="list-style-type: none"> <li>• “Extended” standards may include substantially simplified content, including pre-requisite skills.</li> </ul>	<ul style="list-style-type: none"> <li>• Grade-level.</li> </ul>	<ul style="list-style-type: none"> <li>• Grade-level.</li> </ul>
<b>Assessment</b>	<ul style="list-style-type: none"> <li>• May include reduced coverage and/or simplification of grade-level content, based on “extended” standards. Format may permit variation in test content for individual students if results can be aggregated.</li> </ul>	<ul style="list-style-type: none"> <li>• Built on grade-level content but with easier items.</li> </ul>	<ul style="list-style-type: none"> <li>• Grade-level content.</li> </ul>
<b>Cap</b>	<ul style="list-style-type: none"> <li>• State and LEA.</li> </ul>	<ul style="list-style-type: none"> <li>• State and LEA.</li> </ul>	N/A.
<b>Out-of-Level Assessments</b>	<ul style="list-style-type: none"> <li>• Permitted only if consistent with the regulation, i.e. documented and validated standards-setting process employed.</li> </ul>	<ul style="list-style-type: none"> <li>• Not permitted because out-of-level assessments do not assess grade-level content.</li> </ul>	<ul style="list-style-type: none"> <li>• Not permitted because out-of-level assessments do not assess grade-level content.</li> </ul>
<b>IEP</b>	<ul style="list-style-type: none"> <li>• Must include annual measurable IEP goals and benchmarks or short term objectives.</li> </ul>	<ul style="list-style-type: none"> <li>• Must include annual measurable IEP goals that are based on grade-level content standards.</li> </ul>	<ul style="list-style-type: none"> <li>• Must include annual measurable IEP goals.</li> </ul>
<b>State guidelines define who is eligible</b>	<ul style="list-style-type: none"> <li>• Student with the most significant cognitive disabilities.</li> <li>• IEP Team makes the decision regarding the appropriate assessment.</li> </ul>	<ul style="list-style-type: none"> <li>• Student whose disability has precluded the student from achieving proficiency, as demonstrated by objective evidence of the student’s performance and whose progress is such that, even if significant growth occurs, the student’s IEP team is reasonably certain that the student will not achieve grade-level proficiency within the year covered by the IEP.</li> <li>• IEP Team makes the decision regarding the appropriate assessment.</li> </ul>	<ul style="list-style-type: none"> <li>• Student with a disability who cannot take the regular assessment with accommodations.</li> <li>• IEP Team makes the decision regarding the appropriate assessment.</li> </ul>