

**ADDITIONAL TITLE I PROVISIONS INCLUDED IN
THE REGULATIONS PACKAGE ON
MODIFIED ACADEMIC ACHIEVEMENT STANDARDS
PUBLISHED IN THE FEDERAL REGISTER ON APRIL 9, 2007**

**Non-regulatory Guidance
July 20, 2007**

INTRODUCTION

The Department published regulations in the Federal Register on April 9, 2007 authorizing States to develop modified academic achievement standards for certain students with disabilities and to use results obtained from assessments based on those standards in making adequate yearly progress (AYP) decisions (34 C.F.R. Parts 200 and 300). These regulations amend the regulations governing programs under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), and the regulations governing programs under Part B of the Individuals with Disabilities Education Act (IDEA).

These regulations also include changes to the Title I regulations that are not directly related to modified academic achievement standards and that apply to all States, whether or not they adopt modified academic achievement standards. The Department has been interested in making these changes for some time, and the regulations on modified academic achievement standards were a convenient vehicle for making them.

This non-regulatory guidance document provides States with information about these additional changes to the Title I regulations and responds to questions that the Department has received since publication of the regulations on April 9, 2007.

A. MINIMUM GROUP SIZE (N-SIZE)

Change: Section 200.7(a)(2) prohibits a State from establishing a different minimum number of students for separate subgroups.

A-1. Must the minimum group size for the school as a whole (the “all students” group) be the same as that for each subgroup?

Yes. A State must have the same minimum group size for each subgroup and the “all students” group. If the number of “all students” in a school is less than a State’s minimum group size, however, the State must have a policy in place to determine AYP for the school.

A-2. If a State is changing its minimum group size in order to have the same minimum group size for each subgroup and the “all students” group, must the State adopt a group size that is consistent with the smallest of its existing subgroups?

The Department will consider each State’s rationale for its proposed group size (consistent across all groups) on a case-by-case basis, including its rationale and impact data for its proposed group size. We do not believe it would be appropriate to mandate a particular group size or to require a specific process through which a State establishes its group size.

A-3. Does the requirement for the same minimum subgroup size apply only to States that choose to develop modified academic achievement standards?

No. This requirement applies to all States, regardless of whether they opt to establish modified academic achievement standards.

A-4. When does the requirement for the same minimum subgroup size go into effect?

This provision takes effect for AYP determinations based on assessments administered in the 2007-08 school year.

A-5. What is the rationale for no longer allowing differentiated subgroup sizes?

Prior to the implementation of the final regulations on alternate and modified academic achievement standards, a State had limited flexibility in measuring the achievement of students with disabilities for AYP purposes. Because of ongoing concerns about how accurately State assessments measure the achievement of a very heterogeneous subgroup of students, some States requested permission to use a larger group size for their students with disabilities and limited English proficient (LEP) subgroups. In support of their requests, States argued that a larger group size for these subgroups of students would take into consideration the challenges of measuring their achievement.

With the implementation of the regulations on alternate and modified academic achievement standards and the Title I regulations on assessment and accountability for recently arrived LEP students, we believe that States now have considerable flexibility to measure the achievement of students with disabilities and LEP students appropriately and, therefore, no longer need a different group size for these subgroups. In addition, all States now test in grades 3 through 8 and once in high school, as opposed to just once per grade span, thereby decreasing the measurement error associated with smaller group sizes. With these additional test scores to include in AYP determinations, allowing differentiated subgroup sizes for these two subgroups is no longer statistically justified.

B. MULTIPLE TEST ADMINISTRATIONS

Change: Prior to the publication of the regulations on April 9, 2007, Section 200.20(c)(3) of the Title I regulations required a State to use the first administration of the State assessment to determine AYP. This requirement was removed. Therefore, a State may now administer its State assessments to a student more than once and include the student's best score in determining AYP.

B-1. Are multiple assessment administrations permitted for all students or just for students with disabilities?

The former Section 200.20(c)(3) applied to all students, not just students with disabilities. Therefore, the removal of the former Section 200.20(c)(3) permits multiple test administrations for all students.

B-2. Is a State required to administer its State assessments to a student more than once?

No. This is a State decision.

B-3. When determining AYP, how may a State use the results of multiple administrations of a high school assessment?

“Multiple administrations” means that a student is permitted to take a test on more than one occasion, and as a result, the student has multiple scores. This situation is usually associated with a graduation test or other high stakes assessment, such as those that yield scholarship awards, and the student may use the highest score attained to satisfy the high stakes requirement. For the purpose of calculating AYP, a State must include a score for every student in the calculation of percent proficient and also must count each student in the calculation of participation rate. Current regulations permit a State with an adequate data management system to “bank” test results for individual students over time and use the highest score for school and LEA AYP calculations. This requires the adoption of a “cohort approach” rather than a grade-level approach to calculating AYP for high school. The State must be able to track individual high school students over time and the State must describe in its accountability workbook how it calculates both the percent proficient and the participation rate for AYP. Note that the participation rate must be tied to the score that is used for AYP determinations. For this reason, cohort calculations must reflect both entering and exiting students over the period covered.

If a State's content standards in reading/language arts and mathematics are grade specific, (i.e., the standards specify different content for grades 9, 10, 11, and 12), and the State's high school assessment is limited to content from a specific grade level (e.g., grade 10), then only scores from the test administration in the targeted grade (grade 10) may be used for AYP calculations even if multiple administrations in higher or lower grades are permitted by the State.

C. FORMER STUDENTS WITH DISABILITIES

Change: Section 200.20(f) provides additional flexibility in calculating AYP for the students with disabilities subgroup. States may include, for a period of up to two AYP determination cycles, the scores of students who were previously identified with a disability under the IDEA, but who no longer receive special education services.

C-1. Is a State required to include, in AYP calculations for the students with disabilities subgroup, the scores of former students with disabilities?

No. Section 200.20(f) permits, but does not require, States to include the scores of former students with disabilities within that subgroup.

C-2. If a State decides to include, in AYP calculations for the students with disabilities subgroup, the scores of former students with disabilities, may the State include in those calculations only the proficient and advanced scores of any former students with disabilities?

No. Under §200.20(f)(2)(ii), if a State decides to include (in AYP calculations for the students with disabilities subgroup) the scores of former students with disabilities, it must include in those calculations the scores of all such students; it may not include just the scores of some students – for example, those who scored proficient or advanced – and exclude the scores of others. Former students with disabilities also must be included in each other subgroup to which they belong (e.g., economically disadvantaged, minority status).

C-3. May a State also include the scores of former students with disabilities in reporting results from assessments?

No. In addition to requiring reporting AYP on State and LEA report cards, Section 1111(h)(1)(C)(i), (iii), (iv), (v), and (vi) and Section 1111(h)(2)(B) (as that section applies to an LEA and each school served by the LEA) of Title I requires information to be reported for all students and for the students in each subgroup regardless of whether a student's achievement is used in determining if the subgroup has made AYP (i.e., reporting includes students who have not been enrolled for a full academic year, as defined by the State, and students in subgroups too small to meet the minimum group size for determining AYP). Thus, for reporting under these provisions, Section 200.20(f)(2)(iii)(C) prohibits a State or LEA from including the scores of former students with disabilities in the students with disabilities subgroup because it is important that parents and the public have a clear picture of the academic achievement of those students with disabilities who are currently identified under the IDEA and are receiving services.