

1 **§200.2. State responsibilities for assessment.**

2 (a) (1) Each State, in consultation with its LEAs, must
3 implement a system of high-quality, yearly student academic
4 assessments that includes, at a minimum, academic assessments in
5 mathematics, reading/language arts and science.

6 (2) (i) The State may also measure the achievement of
7 students in other academic subjects in which the State has
8 adopted challenging State academic standards.

9 (ii) If a State has developed assessments in other subjects
10 for all students, the State must include students participating
11 under subpart A of this part in those assessments.

12 (b) The assessments required under this section must--

13 (1) (i) Except as provided in §200.6(c) and sections
14 1111(b) (2) (C), 1111(b) (2) (H), and 1204 of the Act, be the same
15 assessments used to measure the achievement of all students; and

16 (ii) Be administered to all students consistent with
17 §200.5(a);

18 (2) (i) Be designed to be valid and accessible for use by all
19 students, including students with disabilities and English
20 learners; and

21 (ii) Be developed, to the extent practicable, using the
22 principles of universal design for learning. Under this section,
23 the term "universal design **for learning**" means a scientifically
24 valid framework for guiding educational practice that--

25 (A) Provides flexibility in the ways information is
26 presented, in the ways students respond or demonstrate knowledge
27 and skills, and in the ways students are engaged; and

28 (B) Reduces barriers in instruction, provides appropriate
29 accommodations, supports, and challenges, and maintains high
30 achievement expectations for all students, including students
31 with disabilities and students who are English learners;

32 (3) (i) Be aligned with the challenging State academic
33 standards. Specifically, each assessment under this section
34 must--

35 (A) (1) Be aligned to the challenging State academic content
36 standards; and

37 (2) Address the depth and breadth of those standards; and

38 (B) (1) Measure student performance based on challenging
39 State academic achievement standards that are aligned with
40 entrance requirements for credit-bearing coursework in the system
41 of public higher education in the State and relevant State career
42 and technical education standards consistent with section
43 1111(b) (1) (D) of the Act; or

44 (2) With respect to alternate assessments for students with
45 the most significant cognitive disabilities, measure student
46 performance based on alternate academic achievement standards

1 defined by the State consistent with section 1111(b)(1)(E) of the
2 Act that reflect professional judgment as to the highest possible
3 standards achievable by such students to ensure that a student
4 who meets the alternate academic achievement standards is on
5 track to pursue postsecondary education or **competitive,**
6 **integrated** employment, consistent with the purposes of the
7 Rehabilitation Act of 1973 as amended by the Workforce Innovation
8 and Opportunity Act, as in effect on July 22, 2014; and
9 (ii) Provide coherent and timely information about student
10 attainment of those standards and whether a student is performing
11 at the grade level in which the student is enrolled;
12 (4)(i) Be valid, reliable, **and fair** for the purposes for
13 which the assessments are used; and
14 (ii) Be consistent with relevant, nationally recognized
15 professional and technical testing standards;
16 (5) Be supported by evidence that--
17 (i) The assessments are of adequate technical quality--
18 (A) For each purpose required under the Act; and
19 (B) Consistent with the requirements of this section; and
20 (ii) Is made available to the public, including on the
21 State's website;
22 (6) Be administered in accordance with the frequency
23 described in §200.5(a);
24 (7) Involve multiple up-to-date measures of student academic
25 achievement, including measures that assess higher-order thinking
26 skills and understanding of challenging content, as defined by
27 the State. These measures may--
28 (i) Include measures of student academic growth; and
29 (ii) Be partially delivered in the form of portfolios,
30 projects, or extended performance tasks;
31 (8) Objectively measure academic achievement, knowledge, and
32 skills without evaluating or assessing personal or family beliefs
33 and attitudes, except that this provision does not preclude the
34 use of--
35 (i) Constructed-response, short answer, or essay questions;
36 or
37 (ii) Items that require a student to analyze a passage of
38 text or to express opinions;
39 (9) Provide for participation in the assessments of all
40 students in the grades assessed consistent with §§200.5 and
41 200.6;
42 (10) At the State's discretion, be administered through--
43 (i) A single summative assessment; or
44 (ii) Multiple statewide interim assessments during the
45 course of the academic year that result in a single summative
46 score that provides valid, reliable, and transparent information

1 on student achievement and, at the State's discretion, student
2 growth, consistent with paragraph (b)(4)(ii) of this section;
3 (11) Consistent with section 1111(b)(2)(B)(xi) of the Act,
4 enable results to be disaggregated within each State, LEA, and
5 school by--
6 (i) Gender;
7 (ii) Each major racial and ethnic group;
8 (iii) English proficiency status;
9 (iv) Status as a migratory child as defined in section
10 1309(3) of title I, part C of the Act;
11 (v) Children with disabilities as defined in section 602(3)
12 of the Individuals with Disabilities Education Act (IDEA) as
13 compared to all other students;
14 (vi) Economically disadvantaged students as compared to
15 students who are not economically disadvantaged;
16 (vii) **Status as a homeless child or youth** as defined in
17 section 752(2) of title VII, subtitle B of the McKinney-Vento
18 Homeless Assistance Act, as amended;
19 (viii) Status as a child in foster care. **Foster care means**
20 **24-hour substitute care for children placed away from their**
21 **parents or guardians and for whom the title IV-E agency has**
22 **placement and care responsibility. This includes, but is not**
23 **limited to, placements in foster family homes, foster homes of**
24 **relatives, group homes, emergency shelters, residential**
25 **facilities, child care institutions, and preadoptive homes. A**
26 **child is in foster care in accordance with this definition**
27 **regardless of whether the foster care facility is licensed and**
28 **payments are made by the State, tribal, or local agency for the**
29 **care of the child, whether adoption subsidy payments are being**
30 **made prior to the finalization of an adoption, or whether there**
31 **is Federal matching of any payments that are made; and**
32 (ix) Status as a student with a parent who is a member of
33 the Armed Forces on active duty, where the terms "Armed Forces"
34 and "active duty" have the same meanings as defined in 10 U.S.C.
35 101(a)(4) and 101(d)(5);
36 (12) Produce individual student reports consistent with
37 §200.8(a); and
38 (13) Enable itemized score analyses to be produced and
39 reported to LEAs and schools consistent with §200.8(b).
40 (c)(1) At its discretion, a State may administer the
41 assessments required under this section in the form of computer-
42 adaptive assessments if such assessments meet the requirements of
43 section 1111(b)(2)(J) of the Act **and this section**. A computer-
44 adaptive assessment--
45 (i) Must measure a student's academic proficiency based on
46 the challenging State academic standards for the grade in which
47 the student is enrolled and growth toward those standards; and

1 (ii) May measure a student's academic proficiency and growth
2 using items above or below the student's grade level.

3 (2) If a State administers a computer-adaptive assessment,
4 the determination under section 1111(b)(2)(B)(ii) of the Act of a
5 student's academic proficiency for the grade in which the student
6 is enrolled must be reported on all reports required by §200.8
7 and section 1111(h) of the Act.

8 (d) A State must submit evidence for peer review of State
9 assessments under section 1111(a)(4) of the Act that its
10 assessments under this section and §§200.3, 200.4, 200.5(b),
11 200.6(c), and 200.6(f)(1) and (3) meet all applicable
12 requirements.

13 (Authority: 10 U.S.C. 101(a)(4) and (d)(5), 20 U.S.C. 1003(24),
14 6311(a)(4), 6311(b)(2), 6399(3), 42 U.S.C. 11434a; and 45 C.F.R.
15 1355(a))

1 Remove and replace the current text of §200.3 with the following:

2 **§200.3. Locally Selected, Nationally Recognized High School**
3 **Academic Assessments.**

4 (a) In general. (1) A State, at the State's discretion,
5 may permit an LEA to administer a nationally recognized high
6 school assessment in each of reading/language arts, mathematics,
7 or science, approved in accordance with paragraph (b) of this
8 section, in lieu of the respective statewide assessment under
9 §200.5(a)(1)(i)(B) and (a)(1)(ii)(C) if such assessment meets all
10 requirements of this section.

11 (2) An LEA must administer the same locally selected,
12 nationally recognized academic assessment to all high school
13 students in the LEA consistent with the requirements in
14 §200.5(a)(1)(i)(B) and (a)(1)(ii)(C).

15 (b) State approval. If a State chooses to allow an LEA to
16 administer a nationally recognized high school academic
17 assessment under paragraph (a) of this section, the State must--

18 (1) Establish and use technical criteria to determine if the
19 assessment--

20 (i) Is aligned to the challenging State academic standards;

21 (ii) Addresses the depth and breadth of those standards;

22 (iii) Is equivalent to or more rigorous than the statewide
23 assessments under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as
24 applicable, with respect to--

25 (A) The coverage of academic content;

26 (B) The difficulty of the assessment;

27 (C) The cognitive complexity of the assessment overall;

28 (D) The overall quality of the assessment; and

29 (E) Any other aspects of the assessment that the State may
30 establish in its technical criteria;

31 (iv) Meets all requirements under §200.2(b), except for
32 §200.2(b)(1), and ensures that all high school students in the
33 LEA are assessed consistent with §§200.5(a) and 200.6; and

34 (v) Produces valid and reliable data on student academic
35 achievement with respect to all high school students and each
36 subgroup of high school students in the LEA that--

37 (A) Are comparable to student academic achievement data for
38 all high school students and each subgroup of high school
39 students produced by the statewide assessment;

40 (B) Are expressed in terms consistent with the State's
41 academic achievement standards under section 1111(b)(1)(A) of the
42 Act; and

43 (C) Provide unbiased, rational, and consistent
44 differentiation among schools within the State for the purpose of
45 the State-determined accountability system under section 1111(c)
46 of the Act;

1 (2) Before approving any nationally recognized high school
2 academic assessment for use by an LEA in the State--

3 (i) Ensure that the use of appropriate accommodations under
4 §200.6(b) and (f) does not deny any student the opportunity to
5 participate in the assessment or afford any benefit from such
6 participation that is not equal to the benefit afforded to
7 students who do not use such accommodations; and

8 (ii) Submit evidence to the Secretary in accordance with the
9 requirements for peer review of State assessments under section
10 1111(a)(4) of the Act demonstrating that any such assessment
11 meets the requirements in this section; and

12 (3) Approve an LEA's request to use a locally selected,
13 nationally recognized high school academic assessment that meets
14 the requirements in this section.

15 (c) LEA applications. (1) As part of requesting approval
16 to use a locally selected, nationally recognized high school
17 academic assessment, an LEA must update its LEA plan under
18 section 1112 or section 8305 of the Act, including how it was
19 developed consistent with all requirements for consultation under
20 sections 1112 and 8538 of the Act.

21 (2) Before an LEA requests approval from the State to use a
22 locally selected, nationally recognized high school academic
23 assessment, the LEA must notify all parents of high school
24 students it serves--

25 (i) That the LEA intends to request approval from the State
26 to use a locally selected, nationally recognized high school
27 academic assessment in place of the statewide academic assessment
28 under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable;

29 (ii) How parents may provide meaningful input regarding the
30 LEA's request; and

31 (iii) Of any effect of such request on the instructional
32 program in the LEA.

33 (3) Upon approval, the LEA must notify all parents of high
34 school students it serves that the LEA received approval and will
35 use such locally selected, nationally recognized high school
36 academic assessment instead of the statewide academic assessment
37 under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable.

38 (4) In each subsequent year following approval in which the
39 LEA elects to administer a locally selected, nationally
40 recognized high school academic assessment, the LEA must notify--

41 (i) The State of its intention to continue administering
42 such assessment; and

43 (ii) Parents of which assessment the LEA will administer to
44 students to meet the requirements of §200.5(a)(1)(i)(B) and
45 (a)(1)(ii)(C), as applicable, at the beginning of the school
46 year.

47 (5) The notices to parents under this paragraph must--

1 (i) Be in an understandable and uniform format;
2 (ii) Be, to the extent practicable, written in a language
3 that parents and guardians can understand or, if it is not
4 practicable to provide written translations to a parent or
5 guardian with limited English proficiency, be orally translated
6 for such parent or guardian;
7 (iii) Be, upon request by a parent or guardian who is an
8 individual with a disability as defined by the Americans with
9 Disabilities Act, 42 U.S.C. 12102, provided in an alternative
10 format accessible to that parent or guardian, including, but not
11 limited to, braille, large print, or electronic file; and
12 (d) Definition. "Nationally recognized high school
13 academic assessment" means an assessment of student knowledge and
14 skills of high school students that is administered in multiple
15 States and used by institutions of higher education in those
16 States for the purposes of entrance into post-secondary education
17 or training programs or courses of study or for placement into
18 courses in post-secondary education or training programs or
19 courses of study.
20 (Authority: 20 U.S.C. 6311(b)(2)(H), 6312(a), 7918; 29 U.S.C.
21 794; 42 U.S.C. 2000d-1, 12102, and 12132)

1 **§200.4. State law exception.**

2 (a) If a State provides satisfactory evidence to the
3 Secretary that neither the State educational agency (SEA) nor any
4 other State government official, agency, or entity has sufficient
5 authority under State law to adopt academic content standards,
6 student academic achievement standards, and academic assessments
7 applicable to all students enrolled in the State's public
8 schools, the State may meet the requirements under §§200.1 and
9 200.2 by--

10 (1) Adopting academic standards and academic assessments
11 that meet the requirements of §§200.1 and 200.2 on a Statewide
12 basis and limiting their applicability to students served under
13 subpart A of this part; or

14 (2) Adopting and implementing policies that ensure that each
15 LEA in the State that receives funds under subpart A of this part
16 will adopt academic standards and academic assessments aligned
17 with those standards that--

18 (i) Meet the requirements in §§200.1 and 200.2; and

19 (ii) Are applicable to all students served by the LEA.

20 (b) A State that qualifies under paragraph (a) of this
21 section must--

22 (1) Establish technical criteria for evaluating whether each
23 LEA's--

24 (i) Academic content and student academic achievement
25 standards meet the requirements in §200.1; and

26 (ii) Academic assessments meet the requirements in §200.2,
27 particularly regarding validity and reliability, technical
28 quality, alignment with the LEA's academic standards, and
29 inclusion of all students in the grades assessed;

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

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

33 (ii) For purposes of this section--

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

36 (B) Have comparable validity and reliability with respect to
37 groups of students described in §200.2(b)(11); and

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

40 (3) Be able to aggregate, with confidence, data from local
41 assessments to [make accountability determinations under section](#)
42 [1111\(c\) of the Act.](#)

43 (Authority: 20 U.S.C. 6311(b)(2)(E))

1 **§200.5. Assessments administration.**

2 (a) Frequency. (1) A State must administer the assessments
3 required under §200.2 annually as follows:

4 (i) With respect to both the reading/language arts and
5 mathematics assessments--

6 (A) In each of grades 3 through 8; and

7 (B) At least once in grades 9 through 12.

8 (ii) With respect to science, not less than one time during
9 **each of--**

10 (A) Grades 3 through 5;

11 (B) Grades 6 through 9; and

12 (C) Grades 10 through 12.

13 **(2) With respect to any other subject chosen by a State, the**
14 **State may administer the assessments at its discretion.**

15 (b) Middle school mathematics exception. A State that
16 administers an end-of-course mathematics assessment to meet the
17 requirements under paragraph (a)(1)(i)(B) of this section may
18 exempt an eighth-grade student from the mathematics assessment
19 typically administered in grade 8 under paragraph (a)(1)(i)(A) of
20 this section if--

21 (1) The student instead takes the end-of-course mathematics
22 assessment the State administers to high school students under
23 paragraph (a)(1)(i)(B) of this section;

24 (2) The student's performance on the high school assessment
25 is used in the year in which the student takes the assessment for
26 purposes of measuring academic achievement under section
27 1111(c)(4)(B)(i) of the Act and participation in assessments
28 under section 1111(c)(4)(E) of the Act;

29 (3) In high school--

30 (i) The student takes a **State-administered** end-of-course
31 **assessment or nationally recognized high school academic**
32 **assessment as defined in §200.3(d) in mathematics that--**

33 (A) Is more advanced than the assessment the State
34 administers under paragraph (a)(1)(i)(B) of this section; and

35 (B) **Provides for appropriate accommodations consistent with**
36 **§200.6; and**

37 (ii) The student's performance on the more advanced
38 mathematics assessment is used for purposes of measuring academic
39 achievement under section 1111(c)(4)(B)(i) of the Act and
40 participation in assessments under section 1111(c)(4)(E) of the
41 Act; and

42 (4) **The State demonstrates that it offers all students in**
43 **the State the opportunity to be prepared for and to take advanced**
44 **mathematics coursework in middle school.**

45 (Authority: 20 U.S.C. 6311(b)(2) **(B)** (v) and (b)(2)(C))

1 **§200.6. Inclusion of all students.**

2 A State's academic assessment system required under §200.2
3 must provide for the participation of all students in the grades
4 assessed under §200.5(a) in accordance with this section.

5 (a) Students eligible under IDEA and other Acts. A State
6 must include in all assessments under section 1111(b)(2) of the
7 Act, with appropriate accommodations consistent with paragraphs
8 (b) and (f)(3)(iv) of this section--

9 (1) All children with disabilities as defined under section
10 602(3) of the IDEA;

11 (2) Students with the most significant cognitive
12 disabilities who are identified by their IEP team from among the
13 students in paragraph (a)(1) of this section [consistent with the
14 definition in paragraph (e)(1) of this section]; and

15 (3) Students eligible for assessment accommodations under
16 other Acts, including section 504 of the Rehabilitation Act of
17 1973, as amended, and title II of the Americans with Disabilities
18 Act.

19 (b) Appropriate accommodations. (1) A State's academic
20 assessment system must provide, for each student eligible for
21 accommodations under paragraph (a) of this section (hereinafter,
22 student eligible for accommodations), the appropriate
23 accommodations, such as interoperability with, and ability to
24 use, assistive technology devices, that are necessary to measure
25 the academic achievement of the student relative to the
26 challenging State academic standards for the grade in which the
27 student is enrolled or alternate academic achievement standards
28 under section 1111(b)(1)(E) of the Act, for students eligible
29 under paragraph (a)(2) of this section, as determined by--

30 (i) For each student under paragraphs (a)(1) and (a)(2) of
31 this section, the student's individualized education program
32 (IEP) team; or

33 (ii) For each student under paragraph (a)(3), the student's
34 placement team.

35 (2) A State must--

36 (i) Develop, disseminate information on, and promote the use
37 of appropriate accommodations to ensure that all students
38 eligible for accommodations participate in academic instruction
39 and assessments for the grade in which each student is enrolled,
40 except that the students under paragraph (a)(2) of this section
41 may be tested against alternate academic achievement standards;
42 and

43 (ii) Ensure that general and special education teachers and
44 other appropriate staff know how to administer assessments,
45 including alternate assessments under paragraph (c) and paragraph
46 (f)(3)(v) of this section, and know how to make appropriate use

1 of accommodations during assessment for all students eligible for
2 accommodations.

3 (3) A State must ensure that the use of appropriate
4 accommodations under this paragraph and consistent with the
5 State's guidelines under paragraph (d) of this section with
6 respect to assessments adopted by the State under section
7 1111(b)(2) of the Act does not deny a student eligible for
8 accommodations the opportunity to participate in the assessment
9 or afford any benefit from such participation that is not equal
10 to the benefit afforded to students who do not use such
11 accommodations.

12 (c) Alternate assessments aligned with alternate academic
13 achievement standards for students with the most significant
14 cognitive disabilities. (1) If a State has **adopted** alternate
15 academic achievement standards permitted under section
16 1111(b)(1)(E) of the Act for students with the most significant
17 cognitive disabilities, the State must measure the achievement of
18 those students with an alternate assessment that--

19 (i) Is aligned with the challenging State academic content
20 standards under section 1111(b)(1) of the Act **for the grade in**
21 **which the student is enrolled;**

22 (ii) Yields results **for** those students relative to the
23 alternate academic achievement standards; **and**

24 (iii) **At the State's discretion, provides valid and reliable**
25 **measures of student growth across the full spectrum of student**
26 **achievement.**

27 (2) For each subject for which assessments are administered
28 under §200.2(a)(1), the total number of students assessed in that
29 subject using an alternate assessment aligned with alternate
30 academic achievement standards under paragraph (c)(1) of this
31 section may not exceed 1.0 percent of the total number of
32 students in the State who are assessed in that subject.

33 (3) A State must--

34 (i) Not prohibit an LEA from assessing more than 1.0 percent
35 of its assessed students in a given subject with an alternate
36 assessment aligned **to** alternate academic achievement standards;

37 (ii) Review information justifying the need of an LEA to
38 assess more than 1.0 percent of its assessed students with such
39 an alternate assessment, **such as evidence that school, community,**
40 **or health programs in the LEA have drawn large numbers of**
41 **families of students with the most significant cognitive**
42 **disabilities or that the total number of students assessed in the**
43 **LEA is so small that the LEA would assess more than 1.0 percent**
44 **of its assessed students using an alternate assessment even if**
45 **only one or a few students take such assessment; and**

46 (iii) Provide appropriate oversight, as determined by the
47 State based on its review of information under paragraph

1 (c) (3) (ii) of this section, of an LEA that **is required to submit**
2 **information to the State.**

3 (4) If a State anticipates that it will exceed the cap under
4 paragraph (c) (2) of this section with respect to any subject for
5 which assessments are administered under §200.2(a) (1) in any
6 school year, the State may request that the Secretary waive the
7 cap for the relevant subject, pursuant to section 8401 of the
8 Act, for one year. Such request must--

9 (i) Be submitted at least 90 days prior to the start of the
10 State's first testing window;

11 (ii) Include data demonstrating that--

12 (A) The State did not disproportionately assess students in
13 any subgroup of students with the alternate assessment aligned
14 with alternate academic achievement standards in the prior school
15 year as demonstrated by disaggregating at the State level the
16 students who took such assessment using the subgroups defined in
17 section 1111(c) (2) (A), (B), and (D) of the Act; and

18 (B) The State has measured the achievement of at least 95
19 percent of all students and the children with disabilities
20 subgroup who are enrolled in grades for which the assessment is
21 required under §200.5(a) in at least the prior school year;

22 (iii) Include assurances from the State that it has verified
23 that each LEA that the State anticipates will assess more than
24 1.0 percent of its assessed students in any subject for which
25 assessments are administered under §200.2(a) (1) in that school
26 year using an alternate assessment aligned with alternate
27 academic achievement standards, and any other LEA that the State
28 determines will significantly contribute to the State's exceeding
29 the cap under paragraph (c) (2) of this section--

30 (A) Followed each of the State's guidelines under paragraph
31 (d) of this section except (d) (6);

32 (B) Will not significantly increase, from the prior year,
33 the extent to which the LEA assessed more than 1.0 percent of
34 students in any subject for which assessments were administered
35 under §200.2(a) (1) in that school year using an alternate
36 assessment aligned with alternate academic achievement standards
37 unless the LEA has demonstrated to the State a higher prevalence
38 of students with the most significant cognitive disabilities than
39 were enrolled in assessed grades in the prior year; and

40 (C) Will not disproportionately assess students in any
41 particular subgroup under section 1111(c) (2) (A), (B), or (D) of
42 the Act with an alternate assessment aligned with alternate
43 academic achievement standards; and

44 (iv) Include a plan and timeline by which--

45 (A) The State will improve the implementation of its
46 guidelines under paragraph (d) of this section so that the State
47 meets the cap in paragraph (c) (2) of this section in each subject

1 for which assessments are administered under §200.2(a)(1) in
2 future school years;

3 (B) The State will take additional steps to support and
4 provide appropriate oversight to each LEA that the State
5 anticipates will assess more than 1.0 percent of its assessed
6 students in a subject in a school year using an alternate
7 assessment aligned with alternate academic achievement standards,
8 and any other LEA that the State determines will significantly
9 contribute to the State's exceeding the cap under paragraph
10 (c)(2) of this section, to ensure that only students with the
11 most significant cognitive disabilities take an alternate
12 assessment aligned with alternate academic achievement standards.
13 The State must describe how it will monitor and regularly
14 evaluate each such LEA to ensure that the LEA provides sufficient
15 training such that school staff who participate as members of an
16 IEP team or other placement team understand and implement the
17 guidelines established by the State under paragraph (d) of this
18 section so that all students are appropriately assessed; and

19 (C) The State will address any disproportionality in the
20 students taking an alternate assessment aligned with alternate
21 academic achievement standards as identified in paragraph
22 (c)(4)(ii)(A) of this section.

23 (5) Reporting. A State must report separately to the
24 Secretary, under section 1111(h)(5) of the Act, the number and
25 percentage of children with disabilities taking--

26 (i) Regular assessments described in §200.2;
27 (ii) Regular assessments with accommodations; and
28 (iii) Alternate assessments aligned with alternate academic
29 achievement standards under paragraph (c) of this section.

30 **(6) A State may not develop, or implement for use under this**
31 **part, any alternate academic achievement standards for children**
32 **with disabilities that are not alternate academic achievement**
33 **standards for students with the most significant cognitive**
34 **disabilities that meet the requirements of section 1111(b)(1)(E)**
35 **of the Act.**

36 (7) For students with the most significant cognitive
37 disabilities, a computer-adaptive alternate assessment aligned
38 with alternate academic achievement standards must--

39 (i) Assess a student's academic achievement based on the
40 challenging State academic content standards for the grade in
41 which the student is enrolled;
42 (ii) Meet the requirements for alternate assessments aligned
43 with alternate academic achievement standards under this
44 paragraph; and
45 (iii) Meet the requirements in §200.2, except that the
46 alternate assessment need not measure a student's academic
47 proficiency based on the challenging State academic achievement

1 standards for the grade in which the student is enrolled and
2 growth toward those standards.

3 [NOTE FROM ED FOR MEMBERS OF THE NEGOTIATED RULEMAKING
4 COMMITTEE: The section below incorporates elements from prior
5 regulations found in §200.1(f) because those requirements relate
6 primarily to assessment and because the updated statute
7 incorporated many of these topics in 1111(b)(2).]

8 (d) State guidelines. If a State **adopts** alternate academic
9 achievement standards for students with the most significant
10 cognitive disabilities and administers an alternate assessment
11 aligned with those standards, the State must--

12 (1) Establish and monitor implementation of clear and
13 appropriate guidelines for IEP teams to apply in determining, on
14 a case-by-case basis, which students with the most significant
15 cognitive disabilities will be assessed based on alternate
16 academic achievement standards;

17 (2) Provide to IEP teams a clear explanation of the
18 differences between assessments based on grade-level academic
19 achievement standards and those based on alternate academic
20 achievement standards, including any effects of State and local
21 policies on a student's education resulting from taking an
22 alternate assessment aligned with alternate academic achievement
23 standards, **such as how participation in such assessments may
24 delay or otherwise affect the student from completing the
25 requirements for a regular high school diploma;**

26 (3) Ensure that parents of students selected to be assessed
27 using an alternate assessment aligned with alternate academic
28 achievement standards under the State's guidelines in this
29 paragraph are informed that their child's achievement will be
30 measured based on alternate academic achievement standards, and
31 **how participation in such assessments may delay or otherwise
32 affect the student from completing the requirements for a regular
33 high school diploma;**

34 (4) Not preclude a student with the most significant
35 cognitive disabilities who takes an alternate assessment aligned
36 with alternate academic achievement standards from attempting to
37 complete the requirements for a regular high school diploma;

38 (5) Promote, consistent with requirements under the IDEA,
39 the involvement and progress of students with the most
40 significant cognitive disabilities in the general education
41 curriculum; **and**

42 (6) Ensure that it **describes** in its State plan the steps it
43 has taken to incorporate **the principles of** universal design for
44 learning, to the extent feasible, in any alternate assessments
45 **aligned with alternate academic achievement standards** that the
46 State administers.

47 (e) Definitions related to students with disabilities.

1 (1) The term "students with the most significant cognitive
2 disabilities" means [placeholder for definition based on sub-
3 committee deliberation]

4 (2) Consistent with 34 CFR 300.5, the term "assistive
5 technology device" means any item, piece of equipment, or product
6 system, whether acquired commercially off the shelf, modified, or
7 customized, that is used to increase, maintain, or improve the
8 functional capabilities of a child with a disability. The term
9 does not include a medical device that is surgically implanted,
10 or the replacement of such device.

11 (f) English learners. A State must include English learners
12 in its academic assessments as follows:

13 (1) In general. (i) Consistent with §200.2 and paragraphs
14 (f)(2) and (f)(4) of this section, a State must assess English
15 learners in a valid and reliable manner that includes--

16 (A) **Appropriate** accommodations; and

17 (B) To the extent practicable, assessments in the language
18 and form most likely to yield accurate and reliable information
19 on what those students know and can do to determine the students'
20 mastery of skills in academic content areas until the students
21 have achieved English language proficiency.

22 (ii) The State must--

23 (A) Ensure that the use of appropriate accommodations under
24 this paragraph does not deny an English learner the opportunity
25 to participate in the assessment or afford any benefit from such
26 participation that is not equal to the benefit afforded to
27 students who do not use such accommodations;

28 (B) Provide its definition for "languages other than English
29 that are present to a significant extent in the participating
30 student population," consistent with paragraph (f)(iv) of this
31 section, and identify the specific languages that meet that
32 definition;

33 (C) Identify any existing assessments in languages other
34 than English, and specify for which grades and content areas
35 those assessments are available;

36 (D) Indicate the languages other than English that are
37 present to a significant extent in the participating student
38 population, as defined by the State, for which yearly student
39 academic assessments are not available and are needed; and

40 (E) Describe how it will make every effort to develop
41 assessments, at a minimum, in languages **other than English** that
42 are present to a significant extent in the participating student
43 population including by providing--

44 (1) The State's plan and timeline for developing such
45 assessments;

46 (2) A description of the process the State will use to
47 gather meaningful input on assessments in languages other than

1 English, collect and respond to public comment, and consult with
2 educators, parents and families of English learners, and other
3 stakeholders; and

4 (3) As applicable, an explanation of the reasons the State
5 has not been able to complete the development of such assessments
6 despite making every effort; and

7 (iii) A State may request assistance from the Secretary in
8 identifying linguistically accessible academic assessments that
9 are needed.

10 (iv) In determining which languages other than English are
11 present to a significant extent in a State's participating
12 student population, a State must, at a minimum--

13 (A) Ensure that its definition of "languages other than
14 English that are present to a significant extent in the
15 participating student population" encompasses at least the most
16 populous language other than English spoken by the State's
17 participating student population;

18 (B) Consider languages other than English that are spoken by
19 distinct populations of English learners, including English
20 learners who are migratory, English learners who were not born in
21 the United States, and Native American/Alaska Native English
22 learners;

23 (C) Consider languages other than English that are spoken by
24 a significant portion of the participating student population in
25 one or more of a State's LEAs as well as languages spoken by a
26 significant portion of the participating student population
27 across grade levels; and

28 (D) Consider languages other than English spoken by at least
29 thirty percent of English learners in the State.

30 (2) Assessing reading/language arts in English. (i) A
31 State must assess, using assessments written in English, the
32 achievement of an English learner in meeting the State's
33 reading/language arts academic standards if the student has
34 attended schools in the United States, excluding Puerto Rico, for
35 three or more consecutive years.

36 (ii) An LEA may continue, for no more than two additional
37 consecutive years, to assess an English learner under paragraph
38 (f)(1)(i)(B) of this section if the LEA determines, on a case-by-
39 case individual basis, that the student has not reached a level
40 of English language proficiency sufficient to yield valid and
41 reliable information on what the student knows and can do on
42 reading/language arts assessments written in English.

43 (iii) The requirements in paragraph (f)(2)(i) and (ii) of
44 this section do not permit an exemption from participating in the
45 State assessment system for English learners.

46 (3) Assessing English proficiency. (i) A State must--

1 (A) Develop a uniform Statewide assessment of English
2 language proficiency, including reading, writing, speaking, and
3 listening skills; and

4 (B) Require each LEA to use such assessment to assess
5 annually the English language proficiency of all English learners
6 in schools served by the LEA.

7 (ii) The assessment under paragraph (f) (3) (i) of this
8 section must be--

9 (A) Aligned with the State's English language proficiency
10 standards required under section 1111(b) (1) (F) of the Act and
11 provide coherent and timely information about each student's
12 attainment of those standards; and

13 (B) Developed and used consistent with the requirements of
14 §200.2(b) (2), (b) (4), and (b) (5).

15 (iii) If a State develops a computer-adaptive assessment to
16 measure English language proficiency, the State must ensure that
17 the computer-adaptive assessment--

18 (A) Assesses a student's language proficiency, which may
19 include growth toward proficiency, in order to measure the
20 student's acquisition of English; and

21 (B) Meets the requirements for English language proficiency
22 assessments in this paragraph;

23 (iv) A State must provide appropriate accommodations that
24 are necessary to measure a student's English language proficiency
25 relative to the State's English language proficiency standards
26 under section 1111(b) (1) (F) of the Act for each English learner
27 covered under paragraph (a) (1) or (a) (3) of this section; and

28 (v) A State must provide for an alternate English language
29 proficiency assessment for each English learner covered under
30 paragraph (a) (2) of this section who cannot participate in the
31 assessment under paragraph (f) (3) (i) of this section even with
32 appropriate accommodations.

33 (4) Recently arrived English learners. (i) (A) A State may
34 exempt a recently arrived English learner, as defined in
35 paragraph (f) (5) (i) of this section, from one administration of
36 the State's reading/language arts assessment under §200.2.

37 (B) If the State does not assess a recently arrived English
38 learner on the State's reading/language arts assessment, the
39 State must count the year in which the assessment would have been
40 administered as the first of the three years in which the student
41 may take the State's reading/language arts assessment in a native
42 language consistent with paragraph (f) (2) (i) of this section.

43 (C) The State and its LEAs must report on State and local
44 report cards required under section 1111(h) of the Act the number
45 of recently arrived English learners who are not assessed on the
46 State's reading/language arts assessment.

1 (D) Nothing in this paragraph relieves an LEA from its
2 responsibility under applicable law to provide recently arrived
3 English learners with appropriate instruction to enable them to
4 attain English language proficiency as well as grade-level
5 content knowledge in reading/language arts, mathematics, and
6 science.

7 (ii) A State must assess the English language proficiency of
8 a recently arrived English learner pursuant to paragraph (f) (3)
9 of this section.

10 (iii) A State must assess the mathematics and science
11 achievement of a recently arrived English learner pursuant to
12 §200.2 with the frequency described in §200.5(a).

13 (5) Definitions related to English learners.

14 (i) A "recently arrived English learner" is an English
15 learner who has been enrolled in schools in the United States for
16 less than twelve months.

17 (ii) The phrase "schools in the United States" includes only
18 schools in the 50 States and the District of Columbia.

19 (g) Migratory and other mobile students. A State must
20 include migratory students, as defined in title I, part C, of the
21 Act, and other mobile students in its academic assessment system,
22 even if those students are not included for accountability
23 purposes under section 1111(c) (4) (F) of the Act.

24 (h) Students experiencing homelessness. A State must
25 include homeless students, as defined in section 725(2) of title
26 VII, subtitle B of the McKinney-Vento Act, in its academic
27 assessment and accountability systems, consistent with section
28 1111(c) (4) (F) of the Act.

29 (Authority: 20 U.S.C. 1400 et seq. and 6311(b) (2), 29 U.S.C. 794;
30 42 U.S.C. 2000d-1, 11434a, and 12132; and 34 C.F.R. 300.5)

1 **§200.8. Assessment reports.**

2 (a) Student reports. A State's academic assessment system
3 must produce individual student interpretive, descriptive, and
4 diagnostic reports that--

5 (1)(i) Include information regarding achievement on the
6 academic assessments under §200.2 measured against the State's
7 student academic achievement standards; and

8 (ii) Help parents, teachers, and principals to understand
9 and address the specific academic needs of students; and

10 (2) Are provided to parents, teachers, and principals--

11 (i) As soon as is practicable after the assessment is given;

12 (ii) In an understandable and uniform format, including an
13 alternative format (e.g., Braille or large print) upon request;
14 and

15 (iii) To the extent practicable, in a language that parents
16 can understand.

17 (b) Itemized score analyses for LEAs and schools. (1) A
18 State's academic assessment system must produce and report to
19 LEAs and schools itemized score analyses, consistent with
20 §200.2(b)(4), so that parents, teachers, principals, and
21 administrators can interpret and address the specific academic
22 needs of students.

23 (2) The requirement to report itemized score analyses in
24 paragraph (b)(1) of this section does not require the release of
25 test items.

26 (Authority: 20 U.S.C. 6311(b)(2)(B)(x) and (xii))

1 **§200.9. Deferral of assessments.**

2 (a) A State may defer the start or suspend the
3 administration of the assessments required under §200.2 for one
4 year for each year for which the amount appropriated for State
5 assessment grants under section 1002(b) of the Act is less than
6 \$369,100,000.

7 (b) A State may not cease the development of the assessments
8 referred to in paragraph (a) of this section even if sufficient
9 funds are not appropriated under section 1002(b) of the Act.

10 (Authority: 20 U.S.C. 1002(a); 6311(b)(2)(I); 7301b(a)(2))

1 **§200.10. Applicability of a State's academic assessments to**
2 **private schools and private school students.**

3 (a) Nothing in §200.1 or §200.2 requires a private school,
4 including a private school whose students receive services under
5 subpart A of this part, to participate in a State's academic
6 assessment system.

7 (b)(1) If an LEA provides services to eligible private
8 school students under subpart A of this part, the LEA must,
9 through timely consultation with appropriate private school
10 officials, determine how services to eligible private school
11 students will be academically assessed and how the results of
12 that assessment will be used to improve those services.

13 (2) The assessments referred to in paragraph (b)(1) of this
14 section may be the State's academic assessments under §200.2 or
15 other appropriate academic assessments.

16 (Authority: 20 U.S.C. 6320, 7886(a))