

Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Negotiated Rulemaking Committee

Updated for Session Three, April 18-19, 2016

Issue Paper #4a

Issue: Inclusion of students with disabilities in academic assessments

Statutory Cite: 1111(b)(2) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA)

Regulatory Cite: Proposed draft §200.6(a)-(e)

Background:

Section 1111(b)(2)(B)(xiii) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), includes a new requirement that all assessments be developed, to the extent practicable, using principles of universal design for learning (UDL), a scientifically valid framework that supports the learning needs of all students. Section 1111(b)(2)(B)(vii)(II) of the ESEA also requires that appropriate accommodations be provided for students with disabilities identified under the Individuals with Disabilities Education Act (IDEA), as well as those who are provided accommodations under an act other than IDEA. Such accommodations facilitate student access to high-quality assessments in order to measure a student's achievement against challenging State academic content and achievement standards or alternate academic achievement standards for students with the most significant cognitive disabilities.

Section 8101(51) of the ESEA, as amended by the ESSA, defines UDL by saying that the term has the meaning given the term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

Section 103 of the Higher Education Act defines "Universal design for learning" as follows:

- (24) **UNIVERSAL DESIGN FOR LEARNING.** The term "universal design for learning" means a scientifically valid framework for guiding educational practice that—
- (A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and
 - (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient.

Discussion Questions:

While these new statutory provisions promote equity for students with disabilities, who have at times not been provided appropriate accommodations or meaningful opportunities to access the same assessments as their peers, they also raise questions with regard to implementation. For example:

- Should the regulations define "students with disabilities" in a way that encompasses students who receive accommodations under the IDEA as well as those receiving accommodations through other Acts?

- How should ED generally ensure that States promote meaningful access to the general curriculum and assessments for all students with disabilities, including through the use of accommodations and principles of UDL?
- How should the regulations address alignment of alternate academic achievement standards with the State's challenging academic content standards?

Session 3 Update

This language is suggested for inclusion in §200.6. Underlined text has changed since session 2 (except where it is used as the title of a paragraph). As it did previously, **blue** text denotes statutory language, **bold blue** text indicates corrections to language shown as statutory in a prior version, and **red** text indicates proposed regulatory language.

(a) Students with disabilities in general~~eligible~~
~~Appropriate accommodations for students under IDEA and Section 504 other Acts.~~ (1) A State must include students with disabilities in all assessments under section 1111(b)(2) of the Act, with appropriate accommodations consistent with paragraphs (b), and (f)(1), and (f)(3)(iv) of this section.~~-- For purposes of this section, students with disabilities, collectively, are--~~

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

(ii)~~2~~) Students with the most significant cognitive disabilities who are identified by their individualized education program (IEP) teams from among the students in paragraph (a)(1)(i) of this section, ~~consistent with the definition in paragraph (e)(1) of this section~~; and

(iii)~~3~~) Students with disabilities covered~~eligible for assessment accommodations under other Acts, including--~~

(A) Section 504 of the Rehabilitation Act of 1973, as amended;~~7~~ and

(B) Title II of the ~~Americans with Disabilities Act (ADA)~~.

(2)(i) A student with a disability under paragraph (a)(1)(i) or (iii) of this section must be assessed with an assessment aligned with the challenging State academic standards for the grade in which the student is enrolled.

(ii) If a State has adopted alternate academic achievement standards permitted under section 1111(b)(1)(E) of the Act for students with the most significant cognitive disabilities, a student with the most significant cognitive disabilities under paragraph (a)(1)(ii) of this section may be assessed with--

(A) The general assessment under paragraph (a)(2)(i) of this section; or

(B) An alternate assessment under paragraph (c) of this section aligned with the challenging State academic content

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standards for the grade in which the student is enrolled and the State's alternate academic achievement standards.

(b) Appropriate accommodations for students eligible under IDEA and other acts. (1i) A State's academic assessment system must provide, ~~—(A) For each student with a disability~~ eligible for accommodations under paragraph (a) of this section, ~~(hereinafter, student eligible for accommodations),~~ as defined under section 602(3) of the IDEA, the appropriate accommodations, such as interoperability with, and ability to use, assistive technology devices consistent with nationally recognized accessibility standards, that the student's IEP team ~~determines~~ are necessary to measure the academic achievement of the student consistent with paragraph (a) (2) of this section relative to the ~~challenging~~ State's academic content and ~~aligned~~ academic achievement standards for the grade in which the student is enrolled ~~or alternate academic achievement standards under section 1111(b) (1) (E) of the Act, for students eligible under paragraph (a) (2) of this section, as determined by~~ consistent with §200.1(b) (2), (b) (3), and (c) section 1111(b) (1) of the Act as determined by; and

(i) ~~For each child with a disability, as defined by section 602(3) of the Individuals with Disabilities Education Act (IDEA), student by~~ under paragraphs (a) (1) (i) and (iii)(2) of this section, the student's individualized education program ~~(IEP) team; or~~

(Bii) ~~For each student under paragraph (a) (1)(iii) (A) of this section, with a disability covered under other acts other than the IDEA, including under section 504 of the Rehabilitation Act of 1973, as amended (Section 504), appropriate accommodations that the student's placement team determines are necessary to measure the academic achievement of the student relative to the State's academic content and academic achievement standards for the grade in which the student is enrolled, consistent with §200.1(b) (2), (b) (3), and (c).; or~~

(iii) For each student under paragraph (a) (1) (iii) (B) of this section, the individual or team designated by the LEA to make these decisions.

~~(ii) 2) A State must, as part of its guidelines for IEP teams under paragraph (b) of this section--~~

(Ai) Develop, disseminate information to, at a minimum, schools and parents ~~on,~~ and promote the use of appropriate accommodations to ensure that all students with disabilities are able to ~~eligible for accommodations~~ increase the number of students with ~~the most significant cognitive disabilities who~~ participate in academic instruction and assessments consistent

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~~with paragraph (a) (2) of this section for the grade in which each student is enrolled, except that the students under paragraph (a) (2) of this section may be including that the student is are tested against alternate academic achievement standards for the grade in which the student is enrolled; and~~

(Bii) Ensure that ~~regular~~ general and special education teachers, paraprofessionals, specialized instructional support personnel, and other appropriate staff receive necessary training to administer assessments and know how to administer assessments, including, as necessary, alternate assessments under paragraphs (c) and paragraph (f) (3) (v) of this section, and know how to make ~~making appropriate~~ use of appropriate accommodations, during assessment for all students with disabilities ~~eligible for accommodations~~ and students covered under Section 504.

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

(c) Alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities. ~~(i) The State's academic assessment system, developed consistent with §200.2, must provide for one or more alternate assessments in reading/language arts, mathematics, and science for a child with a disability, as defined under section 602(3) of the IDEA, whom the child's IEP team determines cannot participate in all or part of the State assessments under paragraph (a) (1) of this section, even with appropriate accommodations, provided such alternate assessments—~~

~~(i) Are aligned with the challenging State academic content standards under section 1111(b) (1) of the Act; and~~

~~(ii) (A) Alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007-2008 school year, science, except as provided in the following paragraph.~~

~~(B2) (1) If a State has adopted~~ defined alternate academic achievement standards permitted under section 1111(b) (1) (E) of the Act ~~for~~ students with the most significant cognitive

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disabilities, ~~alternate assessments may yield~~~~must~~ the State must measure the achievement of those students with an alternate assessment that--

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

(ii) **Yields** results ~~that measure the achievement of~~~~for~~ those students relative to the alternate academic achievement standards ~~the State has defined under §200.1(d) section 1111(b)(1)(E) of the Act;~~ **and**

(iii) At the State's discretion, provides valid and reliable measures of student growth across the full spectrum of student achievement at all alternate academic achievement levels to help ensure that the assessment results can be used to improve student instruction.

[Note: Paragraphs (2), (3), and (4) are addressed in issue paper 4B.]

~~(53d)~~ Reporting. A State must report separately to the Secretary, under section 1111(h) ~~(45)~~ of the Act, the number and percentage of ~~students~~~~children~~ with disabilities under paragraph (a)(1)(i) and (ii) of this section taking--

- (i) ~~Regular~~General assessments described in §200.2;
- (ii) ~~Regular~~General assessments with accommodations;
- ~~(iii) Alternate assessments based on aligned with the grade-level academic achievement standards described in §200.1(c) section 1111(b)(1)(D) of the Act; and~~
- (iii) ~~Alternate assessments based on modified academic achievement standards in school years prior to 2015-2016; and~~
- ~~(v) Alternate assessments based on aligned with the alternate academic achievement standards described in §200.1 section 1111(b)(1)(E) of the Act under paragraph (c) of this section.~~

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

(7) For students with the most significant cognitive disabilities, ~~assessed using a computer-adaptive alternate assessment aligned to with alternate academic achievement standards (AA-AAAS) under section 1111(b)(2)(D) of the Act must-~~

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(i) Assess a student's academic achievement based on the challenging State academic **content** standards for the grade in which the student is enrolled;

(ii) Meet the requirements for alternate assessments aligned with alternate academic achievement standards under this paragraph; and

(iii) Meet the requirements in §200.2, except that the alternate assessment need not measure a student's academic proficiency based on the challenging State academic achievement standards for the grade in which the student is enrolled and growth toward those standards.

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

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

(1) Establish, consistent with section 612(a)(16)(C) of the IDEA, and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining, on a case-by-case basis, which students with the most significant cognitive disabilities will be assessed based on alternate academic achievement standards;

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

(3) Ensure that parents of students selected to be assessed using an alternate assessment aligned with alternate academic achievement standards under the State's guidelines in this paragraph are informed that their child's achievement will be measured based on alternate academic achievement standards, and **how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma** consistent with §200.2(e);

(4) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment aligned

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with alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma;

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

(6) Ensure that it ~~identifies~~**describes** in its State plan--

~~(i) T~~the steps it has taken to incorporate **the principles** of universal design for learning, to the extent feasible, in any alternate assessments **aligned with alternate academic achievement standards** that the State administers; ~~and~~

~~(ii) How general and special education teachers and other appropriate staff receive training on administering the alternate assessments and make appropriate use of accommodations for students with disabilities eligible for accommodations on all assessments included in the State's system of student academic assessments;~~

(7) Develop, disseminate information on, and promote the use of appropriate accommodations consistent with paragraph (b) of this section to ensure that a student with significant cognitive disabilities who does not meet the criteria in paragraph (a) (1) (ii) increase the number of children with disabilities under paragraph (a) (1) of this section who--

(i) Participates in academic instruction and assessments for the grade level in which the student is enrolled; and

(ii) Are/Is tested based on challenging State academic standards for the grade level in which the student is enrolled.

(e) Definitions related to students with disabilities.

(1) The term "students with the most significant cognitive disabilities" means a child with a disability or disabilities as defined under section 602(3) of the IDEA that significantly impact intellectual functioning and adaptive behavior, and who requires extensive, direct individualized instruction and substantial supports, as determined by the IEP team, except that

--
(i) The identification of a student as having a particular disability as defined in the IDEA must not determine whether a student is a student with the most significant cognitive disabilities; and

(ii) A student with the most significant cognitive disabilities must not be identified solely on the basis of the student's previous low academic achievement, or status as an English learner, or the student's previous need for accommodations to participate in general State or districtwide assessments.

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(2) The term "adaptive behavior" means behavior essential for someone to live independently and to function safely across three domains of daily life skills: conceptual (e.g., language, functional academics, self-direction, money management, and time concepts); social (e.g., interpersonal skills, responsibility, self-esteem, wariness/naïvete, follow rules, etiquette, and social problem solving); and practical (e.g., activities of daily living, occupational skills, safety, healthcare, and travel).

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

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