OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

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MEMORANDUM

TO: State Directors of Special Education

FROM: Judith E. Heumann
Assistant Secretary
Office of Special Education and Rehabilitative Services

Kenneth R. Warlick
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SUBJECT: Questions and Answers about Provisions in the Individuals with Disabilities Education Act Amendments of 1997 Related to Students with Disabilities and State and District-wide Assessments

INTRODUCTION

Requirements for including all children in assessments are based on a number of federal laws, including Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (ADA), Title I of the Elementary and Secondary Education Act (Title I), and the Individuals with Disabilities Education Act Amendments of 1997 (IDEA). Assessment is often associated with direct individual benefits such as promotion, graduation, and access to educational services. In addition, assessment is an integral aspect of educational accountability systems that provide valuable information which benefits individual students by measuring individual progress against standards or by evaluating programs. Because of the benefits that accrue as the result of assessment, exclusion from assessments on the basis of disability generally would violate Section 504 and ADA. [1]

[1] Source: Dear Colleague letter by Judith E. Heumann, Assistant Secretary for Special Education and Rehabilitative Services, and Norma V. Cantu, Assistant Secretary for Civil Rights, U. S. Department of Education, September 29, 1997.

Title I and IDEA include a number of specific requirements for including all children in assessments. In adding these requirements, Congress recognized that many students were not experiencing levels of achievement in school that would enable them to successfully pursue postsecondary educational or competitive work opportunities. Students with disabilities, minority children, migrant and homeless children, children with limited English proficiency and children in poverty were especially at risk. Many of these children's educational programs were marked by low expectations, limited accountability for results, and exposure to a poorer curriculum than that offered to other children.

Congress's findings for the IDEA 1997 amendments noted that "the implementation of this Act has been impeded by low expectations… Over twenty years of research and experience has demonstrated that the education of children with disabilities can be made more effective by having high expectations for such children and ensuring their access in the general curriculum to the maximum extent possible."

According to the Report from the Committee on Labor and Human Resources of May 9, 1997, IDEA provided parents and educators with tools to "promote improved educational results for children with disabilities through early intervention, preschool, and educational experiences that prepare them for later educational challenges and employment." The Report further notes that:

> The new focus is intended to produce attention to the accommodations and adjustments necessary for disabled children to access the general education curriculum and the special services which may be necessary for appropriate participation…
>
> Children with disabilities must be included in State and district-wide assessments of student progress with individual modifications and accommodations as needed. Thus, the bill requires that the IEP include a statement of any individual modifications in the administration of State and district-wide assessments. The committee knows that excluding children with disabilities from these assessments severely limits and in some cases prevents children with disabilities, through no fault of their own, from continuing on to post-secondary education.
>
> The committee reaffirms the existing Federal Law requirement that children with disabilities participate in State and district-wide assessments. This will assist parents in judging if their child is improving with regard to his or her academic achievement, just as the parents of non-disabled children do.

Participation of students with disabilities in State and district-wide assessments is not participation just for the sake of participation. Participation in these assessments should lead to improved teaching and learning. Participation in assessments goes hand in hand with access to the general curriculum.

Including all children in assessment programs can help to ensure a high quality educational experience for each student by creating high education expectations for all children and accountability for the educational results of all students. It is critically important that schools know how successful they are in preparing all students to meet high standards. Parents need to know this as well. The inclusion of all children in State and district-wide assessment programs will provide significant information for improving instruction.

However, it is important that teachers have the training they need in order to improve instruction based upon the data. Seventy percent of the state directors of special education have identified professional development in the area of assessment implications and how the IEP will reflect a student's progress in the general curriculum as a major challenge.

If we are not improving educational results for all children, we need to do things differently than we have in the past. That is why it is so important to disaggregate data about student performance. We must pay attention to the data and make changes as needed to our approaches to ensure that results for all children are improving.

We also need to be willing to rethink and change some of our policies if we find that they arbitrarily deny benefits to students.

This guidance is provided in response to frequently asked questions submitted to the Office of Special Education Program by parents, teachers, assessment coordinators, State education agency staff, and other policy makers. In some cases, the responses provided are clarifications of legal issues. In other instances, the responses are intended to stimulate reflection about the implications of policies and practices for students with disabilities. Clearly, high expectations for students entail high expectations for teachers and schools. This document is intended not only to provide guidance in meeting specific legal requirements, but also to help achieve the benefits of these provisions for students with disabilities.

ACCOUNTABILITY

1. Are students with disabilities required to participate in a State's accountability system?

Although IDEA makes no specific reference as to how States include children with disabilities in the State accountability system, the IDEA requires States to establish performance goals and indicators for children with disabilities--consistent to the maximum extent appropriate with other goals and standards for all children established by the State--and to report on progress toward meeting those goals.

Under Title I of the Elementary and Secondary Education Act, in the 2000-01 school year, each State must have a State assessment system that serves as the primary means for determining whether schools and districts receiving Title I funds are making adequate yearly progress toward enabling all students in Title I schools to reach high standards. All students with disabilities in those schools must be included in the State assessment system, and the scores of students with disabilities must be included in the assessment system for purposes of public reporting and school and district accountability. Under Title I, State assessment systems must assign a score, for accountability purposes, to every student who has attended school within a single school district for a full academic year. And, States must explain how scores from alternate assessments are integrated into their accountability systems. [2]

2. How do States and LEAs use their assessment results?

Under IDEA, States must use information about the performance of children with disabilities in State and district-wide assessment programs to revise their State Improvement Plans as needed to improve their performance. Under Title I, States and LEAs also use the results to review the performance of LEAs and schools, respectively, and to identify LEAs and schools in need of improvement. States and LEAs also use results for rewards and sanctions for schools and districts, and some for decisions about student promotion or graduation. Assessment results can also be used in planning teacher training, summer school and after school programs, and in reviewing alignment between assessments and curriculum. These are State and local district decisions. In addition, IEP teams can consider individual assessment results as they develop programs for students with disabilities.

[2] Source: Letter sent to Chief State School Officers by Michael Cohen, Assistant Secretary for Elementary and Secondary Education, U. S. Department of Education, April 7, 2000.

IEP PROCESSES

3. What is the role of the IEP team in determining whether the child will participate in general or alternate assessments?

The IEP team determines how the child participates in State and district-wide assessments of student achievement. The IEP team determines if any individual modifications in administration are needed in order for the student to participate in the assessment. If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), the IEP team states why the assessment is not appropriate for the child and how the child will be assessed. IEP teams should have the level of expertise needed to make these decisions in an effective manner.

4. May IEP teams exempt children with disabilities from participating in the State or district-wide assessment program?

No. The IEP team determines HOW individual students with disabilities participate in assessment programs, NOT WHETHER. The only students with disabilities who are exempted from participation in general State and district-wide assessment programs are students with disabilities convicted as adults under State law and incarcerated in adult prisons (34 CFR §300.311(b)(1)). With this statutory exception, there should be no language in State or district assessment guidelines, rules, or regulations that permits IEP teams to exempt students from State or district-wide assessment programs.

Section 504 prohibits exclusion from participation of, denial of benefits to, or discrimination against, individuals with disabilities on the basis of their disability in federally assisted programs or activities. Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services**,** programs, or activities of a public entity or be subjected to discrimination by such an entity.

Inclusion in assessments provides valuable information which benefits students either by indicating individual progress against standards or in evaluating educational programs. In some States, participation in assessments is a means to access benefits such as promotion and graduation. Given these benefits, exclusion from assessment programs based on disability would potentially violate Section 504 and Title II of the ADA.

5. Can the IEP statement of how the child will participate in State and district-wide assessments of student achievement be changed without reconvening the IEP team?

No. If the IEP team wishes to modify a provision of the IEP, it must meet again to make the change.

PARENTAL PERMISSION

6. Is parental permission required for children with disabilities to participate in State and district-wide assessment programs if parental permission is not required for the participation of non-disabled students?

No. If parental permission is not required for participation in the State and district-wide assessment programs for non-disabled children, it is not required for children with disabilities. However, parents of children with disabilities as members of the IEP team will be involved in IEP team decisions on how an individual child will participate in such assessment programs.

7. If a State permits parents of non-disabled children to choose not to have their child participate in State or district-wide assessments, do parents of children with disabilities have the same right in regard to assessments and alternate assessments?

Yes. Parents of a child with a disability should have the same right to "opt out" as parents of non-disabled students consistent with any allowable justification criteria established by the SEA or LEA. Denying parents of children with disabilities the same rights afforded parents of non-disabled children would raise concerns about discrimination on the basis of disability. However, parents and students should be informed of the consequences of participation and non-participation in State or district-wide assessments. For example, parents should know that State and district-wide assessments can improve accountability and promote services that better meet the needs of the participating students, while non-participation may limit opportunities for promotion, graduation and access to programs. Parents should not be pressured to "opt out" of assessment programs. Most States already keep track of students who are "opted out" of assessment programs by parents. States and districts should keep track of parent-requested "opt out" exemptions for students with disabilities disaggregated from those for students without disabilities. This should help the State to determine if "opting out" pressure is occurring.

ACCOMMODATIONS AND MODIFICATIONS

8. The words "accommodations" and "modifications" are both used in the federal statute and regulations, but the precise meanings are unclear. Will OSEP differentiate the two and explain the relationship between them?

There is no universal agreement about the definitions of these terms, but OSEP recognizes that there has been an evolution of assessment terminology and increased agreement about such terminology since the IDEA Amendments of

1997. When referring to assessments, the term "accommodation" is commonly used to define changes in format, response, setting, timing, or scheduling that do not alter in any significant way what the test measures or the comparability of scores. In contrast, when changes in the assessment alter what the test is supposed to measure or the comparability of scores, terms such as "modification", "nonstandard administration", "non-approved or non-aggregatable modifications" are often used. However, some States use the terms "modification" or "modified" to refer to changes commonly thought of as "accommodations."

The IDEA statute and regulations use the terms "accommodations" and "modifications in administration" in connection with State and district-wide assessment programs and assessments of student achievement. And, the Analysis of Comments and Changes that accompanied the publication of the final regulations uses the terms "individual modifications" and "necessary modifications" as well. However, the definitions of these terms as used in the statute and regulations are not intended to correspond with the evolving usage of these terms in the field of assessment as discussed in the previous paragraph. For example, 34 CFR §300.347 requires that IEPs include a statement of "modifications in the administration" of assessments of student achievement. In this context, "modifications in administration" should be viewed as a general term that would include both accommodations and modifications, as they are commonly used in assessment practice. Further, 34 CFR §300.138 requires that children with disabilities be provided with "accommodations and modifications in administration, if necessary", which would include the full range of accommodations and modifications, as they are commonly used in assessment practice.

9. Can the SEA or LEA limit the authority of the IEP team to select individual accommodations and modifications in administration needed for a child to participate in the assessment?

No. 34 CFR §300.347(a) (5)(I) requires that the IEP team have the responsibility and the authority to determine what, if any, individual modifications in the administration of State or district-wide assessments of student achievement are needed in order for a particular child with a disability to participate in the assessment. If the IEP Team determines that individual modifications in the administration of State or district-wide assessments of student achievement are needed, the Team must include a statement of any such modifications in the IEP. In addition, §300.138(a) requires that appropriate accommodations and modifications in administration of State or district-wide assessments must be provided if necessary to ensure the participation of children with disabilities in those assessments. As part of each State's general supervision responsibility under §300.600, it must ensure that these requirements are carried out. States that have developed a comprehensive policy governing the use of testing accommodations (including the conditions and instructions for appropriate use of specific

accommodations and how scores are to be reported and used) need to ensure that they are consistent with this IDEA requirement

At the same time, IEP teams need to understand and consider the implications of SEA/LEA policies on the reporting and use of scores in addressing what individual modifications and accommodations are appropriate for an individual child with a disability. SEAs and LEAs should carefully consider the intended and unintended consequences of accommodation policies that may impact on student opportunities such as promotion or graduation (e.g. receipt of a regular diploma, a certificate of attendance, etc.). Parents and students need to be fully informed of any consequences of such policies.

A major challenge for assessment programs is how to maintain assessment rigor (reliability and validity of assessments), implement and protect the individual rights of students, and simultaneously ensure that schools teach all children what they need to know and to do (knowledge and skills). Much of the current research on accommodations and modifications is inconclusive, so in many cases the impact of specific accommodations is not known. Continued research is underway, and more is needed.

A number of legal principles and concerns apply if a student may be denied benefits such as promotion or graduation because of questionable validation of accommodations. One solution suggested by the National Center on Educational Outcomes (NCEO) at the University of Minnesota is to collect and use additional evidence that allows the student to demonstrate competency in lieu of a single test score. Further information is available from the NCEO (612-626-1530; http://www.coled.umn.edu/NCEO).

ALTERNATE ASSESSMENTS

10. What is an alternate assessment?

Generally, an alternate assessment is understood to mean an assessment designed for those students with disabilities who are unable to participate in general large-scale assessments used by a school district or State, even when accommodations or modifications are provided. The alternate assessment provides a mechanism for students, including those with the most significant disabilities, to participate in and benefit from assessment programs.

Alternate assessments need to be aligned with the general curriculum standards set for all students and should not be assumed appropriate only for those students with significant cognitive impairments. The need for alternate assessments depends on the individual needs of the child, not the category of the child's disability. Although it is expected that the number of students participating in alternate assessments will be relatively small, participation in alternate

assessments should not, in and of itself, preclude students from access to the same benefits available to non-disabled students for their participation. Thus, the alternate assessment is sufficiently flexible to meet the needs of difficult-to-assess students with disabilities who may need the alternate assessment to demonstrate competency for benefits such as promotion or a diploma. It may also enable IEP teams, including informed parents, to make choices about appropriate participation that may lead to an IEP diploma or other type of certification.

11. When does a State (or LEA) need to conduct an alternate assessment?

All SEAs and LEAs must provide alternate assessments for all State and district-wide assessments conducted beginning no later than July 1, 2000.

12. Do the requirements to establish participation guidelines for alternate assessments and to develop alternate assessments apply to both SEAs and LEAs?

Yes. 34 CFR §300.138 specifically requires inclusion of children with disabilities in both State and district-wide assessment programs and requires both the SEA and the LEA, as appropriate, to develop guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessments, and develop alternate assessments.

Of course, if an LEA does not conduct district-wide assessments other than those that are part of the State assessment program, then the LEA would follow SEA guidelines and use the SEA alternate assessment(s). The requirements apply to district-wide assessments regardless of whether or not there is a State assessment.

13. If the SEA has developed guidelines for participation in State alternate assessments, can the LEA use those guidelines to meet its LEA responsibility?

There is nothing that prohibits the LEA from adopting the SEA guidelines if the SEA guidelines are consistent with the assessment program objectives of LEA district-wide assessments. However, if the district-wide assessment is used for significantly different purposes than the State assessment, the LEA should ensure that the participation guidelines developed for the State assessment are consistent with the purposes of the district-wide assessment, or should develop guidelines consistent with the purposes of its district-wide assessment.

14. Does a State need to have an alternate assessment for each content area assessed in the regular assessment program?

The number of alternate assessments is a State decision. As in many State and district-wide assessment programs, the assessment may consist of multiple

components or batteries. The alternate assessment(s) should at a minimum assess the broad content areas such as communication, mathematics, social studies, science, etc. assessed in the State or district-wide assessment. The alternate assessment may assess additional content, including functional skills, as determined necessary by the State or local district. Functional skills can also be aligned to State standards as real world indicators of progress toward those standards. Title I requires that at a minimum reading/language arts and math are assessed, but Title I also requires that if other subject areas are assessed by the State for Title I purposes, then all students in Title I schools in the grades assessed need to be assessed in those content areas as well. The purpose of an alternate assessment should match at a minimum the purpose of the assessment to which it is intended to serve as an alternate.

15. Can LEAs use the State alternate assessment to meet its obligation to develop an alternate to its district-wide assessment?

The issue is alignment between the alternate assessment and the large-scale assessment. Districts must adopt local guidelines for participation in alternate assessments and they must develop and conduct alternate assessments no later than July 1, 2000. Whether an alternate assessment developed by the State for use with a State-wide assessment is also an appropriate alternate assessment to the local district-wide assessment depends upon the type of alternate assessment selected, the nature of the district-wide assessment, the content measured, and the purposes for which the results will be used. The purpose of an alternate assessment should match at a minimum the purpose of the assessment to which it is intended to serve as an alternate.

16. Can LEAs use their own alternate assessment or must they use the State's alternate assessment?

In States with statewide assessment programs, local districts must administer the State alternate assessment. Moreover, local districts must develop and conduct alternate assessments if they have district-wide assessments, or use the State alternate if appropriate.

OUT-OF-LEVEL TESTING

17. Is out-of-level testing by States acceptable?

"Out-of-level testing" means assessing students in one grade level using versions of tests that were designed for students in other (usually lower) grade levels. Some States allow out-of-level testing in an effort to limit student frustration and provide appropriate assessment levels. Although IDEA does not specifically prohibit its use, out-of-level testing may be problematic for several reasons when used for accountability purposes. 34 CFR §300.137 requires that the performance goals for children with disabilities should be consistent, to the maximum extent

appropriate, with other goals and standards for all children established by the State. The purpose is to maintain high expectations and provide coherent information about student attainment of the State's content and student performance standards.

Out-of-level testing may not assess the same content standards at the same levels as are assessed in the "grade-level" assessment. Thus, unless the out-of-level test is designed to yield scores referenced to the appropriate grade-level standards, out-of-level testing may not provide coherent information about student attainment of the State or LEA content and student performance standards. Also, many assessment experts argue that out-of-level testing produces scores that are (even using transformation formulations) insufficiently comparable to allow aggregation, as required by 34 CFR §300.139. If out-of-level tests are used, IEP teams need training and clear information about the statistical appropriateness of administering such tests at each possible level different from the student's grade level.

Out-of-level tests may lower expectations for students, prevent them from demonstrating their full competence, subject them to a lower-level curriculum, and restrict their access to the general curriculum. Important goals of both IDEA and Title I are to maintain high expectations for all children and to ensure that teachers and schools are able to teach diverse learners. Students with disabilities are entitled to the same rich curriculum as their non-disabled peers.

One source for additional information about out-of-level testing is the National Center on Educational Outcomes (NCEO) at the University of Minnesota (612-626-1530; http://www.coled.umn.edu/NCEO).

18. Can an out-of-level test be considered an "alternate" assessment?

Out-of-level tests are considered modified administrations of the State or district-wide assessments rather than alternate assessments, and scores on out-of-level tests should be converted to reflect performance at grade level and reported as performance at the grade level at which the child is placed unless such reporting would be statistically inappropriate.

REPORTING

19. What reports on assessment are required by IDEA?

34 CFR §300.137 requires States to report to the Secretary and to the public every two years on the progress of the State and of the children with disabilities in the State toward meeting performance goals including performance on assessments, drop-out rates, and graduation rates. Additionally, 34 CFR §300.139 requires the SEA to report to the public, in the same frequency and detail as it reports for non-

disabled children, on the number and performance results of children with disabilities participating in regular and alternate assessments and to include in those reports aggregated data that include the participation of children with disabilities together with all other children and disaggregated data on the performance of children with disabilities.

20. IDEA refers to children with disabilities being included in "general State and district-wide assessment programs," but only requires that State education agencies report to the public on the participation and performance of children with disabilities on assessments. Are local education agencies also required to report to the public in a similar fashion?

The IDEA requirement is for reporting by the State education agency. Many States have similar requirements for local education agencies to report similarly on local assessment programs. Under IDEA, this is a State decision.

21. What are the requirements for aggregation and disaggregation of data? Are aggregation and disaggregation required at the State level only? State level and district level only? Or State level, district level, and site level?

Under IDEA, States must report aggregated data that include the performance of children with disabilities together with all other children and disaggregated data on the performance of children with disabilities. There is no requirement for disaggregation by category of disability, just disaggregation of the performance of children with disabilities separate from the performance of non-disabled children. These reports must be made with the same frequency and in the same detail as reports on the assessment of non-disabled children. For example, if school level results are reported, then school level results for students with disabilities generally must be disaggregated. It is the SEA's decision how to collect sufficient data from LEAs to meet the Federal SEA reporting requirement consistent with these provisions.

22. Are performance results from alternate assessments required to be aggregated with data from general assessments?

It is important for States to report performance data from alternate assessments in a way that ensures that all children with disabilities are included in the accountability benefits of State and district-wide assessments. Thus, OSEP encourages States to aggregate scores from the alternate assessment with scores from the general assessment whenever appropriate.

23. What is meant by "statistically sound" in 34 CRF 300.139?

There are at least two issues for consideration. One has to do with the sample size. In some instances, for example if a State chooses to disaggregate by disability categories (not a federal requirement) or report on the performance of

students with disabilities in small school districts, the relatively small number of students in that category or district might raise questions about statistical soundness if generalizations are to be made about student performance. A second issue centers around the reporting of performance for students who take non-standard or modified administrations of an assessment. In such cases, there may be questions about the validity of the assessment and its comparability to the standard assessment.

OSEP is concerned about students with disabilities who are excluded from assessment reports because of questions about statistical soundness. Public reports are a key component of many educational accountability systems, and exclusion from these reports may deny students with disabilities the benefits of these systems and fail to hold schools and LEAs accountable for their performance. It is important for States, LEAs, and test developers to provide a range of modifications in administration that preserve the validity and comparability of assessments so that student performance can be fully reported. In cases where validity or comparability are found to be significantly weakened, full reporting may be achieved through the collection of additional evidence, as discussed under Question 9.

24. Can a State or local education agency provide individual performance results to its schools, or would this violate the requirement to avoid disclosure of performance results identifiable to individual children?

The reference to disclosure simply refers to the inappropriateness of public reports that deal with samples so small as to publicly disclose the performance of individual students, not to providing results to schools for students served by the school.

25. To avoid publicly disclosing performance results identifiable to individual students, can a State or local education agency adjust the administrative levels at which it reports these results? For example, can it report the alternate assessment at the district level even though the general assessment is reported at the school level?

Yes, but only if necessary to avoid publicly disclosing results identifiable to individual students.

MONITORING

26. How will OSEP monitor compliance with IDEA 97 assessment requirements?

OSEP's Continuous Improvement Monitoring Process focuses on compliance and results. There are several mechanisms that OSEP employs to review a State's performance in these areas. Through the State's self-assessment and OSEP's data

review, OSEP examines results-oriented data such as drop-out rates, graduation rates, and performance on assessments. These data will be used to determine the level of intervention of OSEP's monitoring activities.

Federal requirements related to assessment can be found at 34 CFR §§300.138 (Participation in Assessments), 300.139 (Reports) and 300.347(a)(5)(i) (Content of IEP). These requirements will be examined in several ways through OSEP's Continuous Improvement Monitoring Process. As part of the State's self-assessment process, information from State and district-wide assessment should be used by the State's monitoring Steering Committee to evaluate the State's level of implementation and performance. For example, States should examine in their self-assessment, the number of students taking the Statewide assessments and the number participating in alternate assessments. Also, performance on assessments is an important indicator for a State to use in evaluating and improving results for children with disabilities.

As part of data collection in the SEA and in LEAs, OSEP monitors will review documents and interview regarding participation in State and district-wide assessments. OSEP will gather data to determine that the State has developed alternate assessments and provided guidelines for the participation of children with disabilities in alternate assessments. In addition, OSEP will review the extent to which alternate assessments are aligned with general curriculum standards. OSEP will gather information about participation of children with disabilities in Statewide and district-wide assessment programs, including information that is reported to the public - aggregated and disaggregated - in the same frequency and in the same detail as for non-disabled. Finally, OSEP will review whether the IEP team determines any modifications in administration in State or district-wide assessments.

cc: Chief State School Officers
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