

**DEPARTMENT OF EDUCATION****34 CFR Parts 200 and 300**

RIN 1810-AA98

**Title I—Improving the Academic Achievement of the Disadvantaged; Individuals With Disabilities Education Act (IDEA)—Assistance to States for the Education of Children With Disabilities**

**AGENCY:** Office of Elementary and Secondary Education; Office of Special Education and Rehabilitative Services, U.S. Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing programs administered under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB) (referred to in these regulations as the Title I program) and the regulations governing programs under Part B of the Individuals with Disabilities Education Act (IDEA) (referred to in these regulations as the IDEA program). These regulations provide States with additional flexibility regarding State, local educational agency (LEA), and school accountability for the achievement of a small group of students with disabilities whose progress is such that, even after receiving appropriate instruction, including special education and related services designed to address the students' individual needs, the students' individualized education program (IEP) teams (IEP Teams) are reasonably certain that the students will not achieve grade-level proficiency within the year covered by the students' IEPs.

**DATES:** These regulations are effective May 9, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Regarding Part 200, Jacquelyn C. Jackson, Ed.D., Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB-6, Washington, DC 20202-6132. Telephone: (202) 260-0826. Regarding Part 300, Alexa Posny, Ph.D., Director, Office of Special Education Programs, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Potomac Center Plaza, 550 12th Street, SW., Washington, DC 20202-2641. Telephone: (202) 245-7459, Ext. 3.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** These regulations amend regulations in 34 CFR part 200, implementing certain provisions of Title I, Part A of the ESEA, as amended by NCLB, which are designed to help disadvantaged children meet high academic standards. They also amend regulations in 34 CFR part 300, implementing programs for students with disabilities under Part B of the IDEA. On December 15, 2005, the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the **Federal Register** (70 FR 74624).

These regulations build upon flexibility that currently is available under the Title I regulations in 34 CFR part 200 for measuring the achievement of students with the most significant cognitive disabilities. Those Title I regulations permit a State to develop alternate academic achievement standards for students with the most significant cognitive disabilities and to include those students' proficient and advanced scores on alternate assessments based on alternate academic achievement standards in measuring adequate yearly progress (AYP), subject to a cap of 1.0 percent of all students assessed at the State and district levels. Since those regulations were published, the experiences of many States, as well as recent research, indicate that in addition to students with the most significant cognitive disabilities, there is a small group of students whose disability has precluded them from achieving grade-level proficiency and whose progress is such that they will not reach grade-level achievement standards in the same time frame as other students. Currently, these students must take either a grade-level assessment or an alternate assessment based on alternate academic achievement standards. Neither of these options provides an accurate assessment of what these students know and can do. A grade-level assessment is too difficult and, therefore, does not provide data about a student's abilities or information that would be helpful to guide instruction. An alternate assessment based on alternate academic achievement standards is too easy and is not intended to assess a student's achievement across the full range of grade-level content. Such an assessment, therefore, would not provide teachers and parents with

information to help these students progress toward grade-level achievement.

These regulations permit States to develop an assessment that is appropriately challenging for this group of students as part of their State accountability and assessment systems under Title I of the ESEA, as amended by NCLB. This assessment is based on modified academic achievement standards that cover grade-level content. The requirement that modified academic achievement standards be aligned with grade-level content standards is important—in order for these students to have an opportunity to achieve at grade level, they must have access to, and instruction in, grade-level content. The regulations include a number of safeguards to ensure that students assessed based on modified academic achievement standards have access to grade-level content so that they can work toward grade-level achievement, such as the requirement that their IEPs include goals that are based on grade-level content standards and provide for monitoring of the students' progress in achieving those goals. In addition to ensuring that students with disabilities are appropriately assessed, these regulations also will give teachers and schools credit for the work that they do with these students to help them progress toward grade-level achievement.

**Major Concepts Regarding Modified Academic Achievement Standards in These Regulations**

*What are modified academic achievement standards?* The NPRM described modified academic achievement standards as academic achievement standards aligned with grade-level content standards, but modified in such a manner that they reflect reduced breadth or depth of grade-level content. Based on the comments we received, it was clear that this language was confusing and did not sufficiently convey our intent that only the academic achievement standards for students are to be modified, not the content standards on which those modified academic achievement standards are based. The final regulations make clear that modified academic achievement standards are challenging for eligible students, but are a less rigorous expectation of mastery of grade-level academic content standards. Notably, modified academic achievement standards must be based on a State's grade-level academic content standards for the grade in which an eligible student with disabilities is