



## **No Child Left Behind Act NSBA Summary Of Regulation On Assessments**

On July 5, 2002, the United States Department of Education promulgated regulations to implement the standards and assessment requirements of the No Child Left Behind Act. This paper summarizes the key provisions. NSBA's commentary (which appears in parenthesis), draws substantially from the official supplemental materials and discussion comments that accompany the regulations.

For the most part, the July 5 regulations involve the requirements and discretion that a state has in developing its standard and assessment systems. They cover the basic design of these systems, including the academic subject and grades involved, implementation time tables, special assessment procedure for students with disabilities, and limited English proficiencies, and the disaggregation of assessment results for special categories of children. This particular set of regulations does not address how to use assessments for school district or school accountability purposes. Nor does it indicate the kinds of interventions that school districts would be subject to in cases of weak performance. That information is contained in the United States Department of Education's proposed regulations of August 6, 2002. The two documents, therefore, need to be read together for a full understanding of how the NCLBA operates.

Since this paper is a summary, the actual regulations should be consulted prior to making any official decisions regarding program implementation.

### **1. State Responsibilities For Developing Standards {§200.1}**

The state must develop uniform academic content and student achievement standards for all public schools and all public school students for mathematics and reading/language arts (immediately), and for science (by the 2005-2006 school year). The state may also develop standards for other subjects.

Content standards must specify what all students are expected to know and do. They can cover more than one grade level, but must provide grade level expectations for students in each grade, 3 through 8. At the high school level, the standards must define what all high school students must need to know and do, regardless of years completed.

Achievement standards (i.e., how well students must know or be able to perform content standards) must be expressed as proficient, advanced, or basic (to measure progress of lower achieving students). Descriptions of the competences associated with each of those three achievement levels must be indicated, as well as the numerical (or cut) scores that differentiate each such level.

(NOTE: States may have achievement standards in addition to the required three of basic, proficient and advanced).

If a state currently has no standard in a subject (e.g., a subject other than math and reading/language arts), its state plan must describe how local Title I students will be taught the same knowledge and skills, as well as be held to the same expectations as other students. Likewise, if a state does have standards in any of these other subjects, those standards must be applied to Title I students.

## **2. State Responsibilities For Assessment {§200.2}**

The state, in consultation with local school districts, must implement a system of academic assessments for math and reading/language arts (consistent with the timeline in item 5 below) and for science (by the 2007-2008 school year). If the state has developed assessments for students in other subjects for all students, it must include Title I students in those assessments. The state assessment must meet certain technical requirements (e.g., be aligned with content standards, be valid and reliable for the purposes used, and be accessible to children with disabilities and limited English proficiency). Additionally, results must be disaggregated at the state, school district, and school levels on the basis of the following six groups:

- a. Gender
- b. Each major racial and ethnic group
- c. English proficiency status
- d. Migrant status
- e. Students with disabilities
- f. Economically disadvantaged students.

The state may use academic assessments that do meet the requirements of the NCLBA, in addition to those that are used to meet the NCLBA requirements for the assessment system. However, if they do, those assessments can't be used to reduce the number or identity of schools that otherwise would be identified for improvement, corrective action, or restructuring. However, they can be used to identify additional schools in those categories.

[NOTE: 1) The regulations do not specify criteria for how a state determines whether a racial or ethnic group is large enough to be considered "major". 2) States can use different (parallel) assessment instruments involving different

questions for different students in the same subject at a specific grade level, provided they are comparable in terms of the content and understanding that they are eliciting. 3) Although the NCLBA requires all students to be assessed at their grade level, an out of grade level test can be used as a supplement to help measure the progress of a student performing below grade level. But, again, it cannot be used as a substitute for the in-grade level assessment that will be needed to determine whether the assessment and accountability requirements (e.g., Adequate Yearly Progress) under the NCLBA are being met.]

### **3. Designing State Academic Assessment Systems {§200.3}**

The state assessment system must be coherent across the grades and subjects to be assessed and the results must be expressed in terms of advanced, proficient and basic. The assessments can be “criterion-referenced” or “nationally norm referenced” at a particular grade. However, norm referenced tests must be aligned with the depth and breadth of the state’s content standards and the results must be expressed in terms of advanced, proficient and basic in meeting state standards (i.e., students must be measured by whether they have met the state standard as distinguished from a ranking or percentile that compares their scores with other students).

If a state uses a combination of assessments, including allowing locally selected assessments, the state plan must show a rational and coherent design, including the contribution of each assessment toward determining Adequate Yearly Progress (AYP) and how the test measures progress in order to inform instruction to meet state standards.

Further, the state plan must demonstrate that all local assessments used for the state’s AYP assessment system are 1) equivalent to one another, and to the state’s assessment, in terms of content coverage, difficulty, and quality, as well as, 2) meeting certain technical requirements.

[NOTE: 1) Although the assessment must be aligned with the breadth and depth of state standards, that requirement is applicable to the standards system as a whole—as distinguished from each and every content standard. 2) Since the high school assessment speaks to what students must be able to know and do in high school, an end of course algebra test, for example, itself won’t suffice if students are also expected to know geometry. Consequently, the math assessment, may embrace several courses (but is not required to serve as a graduation test).]

### **4. State Law Exception {§200.4}**

If a state does not have the authority to adopt state standards or assessments, it may either 1) rely on local assessments only, provided that certain criteria are met or 2) it may adopt state standards and assessments and limit their application to Title I students.

### **5. Timeline For Assessments {§200.5}**

The assessments for mathematics and reading/language arts must be administered in each grade, 3 through 8, and, at least once, in high school by the 2005-2006 school year. In the meantime, they must be administered at least once during each of the following three grade spans: a) grades 3 through 5, b) grades 6 through 9, and c) grades 10-12. (i.e., at least one grade level in each of three grade spans must be assessed). The state can apply for a one-year extension of the 2005-2006 deadline on the basis of certain unforeseen circumstances. No later than the 2007-2008 school year, the science assessments must be administered at least once in each of the three grade spans listed above.

The state must provide assessment results from one school year to school districts, schools, and teachers, in a clear and understandable manner, prior to the beginning of the next school year.

## 6. Inclusion Of All Students {§200.6}

(NOTE: This section requires that, where appropriate, special accommodations must be made for how students with disabilities or limited English proficiency are assessed. Additionally, migrant and homeless children must be included in the assessment. The assessment results for the first three of the aforementioned sets of students would be reported as separate disaggregated groups, whereas results for homeless children would only be reported as part of the whole population. For AYP accountability purposes, the results for migrant and homeless students would be counted as part of the general population (not as a separate group), but then only if they are enrolled in the state school district or school, as the case may be, for the entire school year.)

- a. *Students With Disabilities.* Appropriate accommodations must be made as determined by the student's IEP team to measure his/her achievement relative to the content and achievement standards for the grade in which that child is enrolled. If the IEP team determines that the student can not participate in all or part of the assessment even with appropriate accommodations, then one or more alternative assessments must be provided for mathematics and reading/language arts (immediately), and for science (beginning the 2007-2008 school year).

[NOTE: An accommodation may include a change in the test format or time allowed to complete answers, but not substituting a lower grade level test. Alternative assessments would generally apply to students with serious cognitive disabilities. (See also §200.13)]

- b. *Limited English Proficient Students.*
  - i. **In General.** The state must assess limited English proficient (LEP) students in a reliable and valid manner that includes, i) reasonable accommodations, and, ii) to the extent practical, assessments in a

language and form that is most likely to yield accurate results in determining what students know and can do in courses other than English until such time that they achieve English proficiency. (e.g., a math test should not become an English test of the student's ability to understand English in terms of the instructions on the test, the language used in a word problem, etc.)

- ii. **Assessing Reading/Language Arts.** In its state plan, the state must identify the various languages in the student population and whether an assessment in those languages is available and needed. Limited English proficient students who have attended U.S. schools (outside of Puerto Rico) for three consecutive years or less may be assessed in a language other than English to determine whether they have met the state's reading/language arts standards. However, on a case-by-case basis, a local school district may assess students in another language for up to two additional consecutive years if their English proficiency is not at a level to yield reliable and valid results on a reading/language arts assessment written in English.

(NOTE: In essence, it would be expected that after three years in United States' schools that student proficiency in reading/language arts would be determined on the basis of their usage of English—unless another two years is locally authorized on an individual basis. This provision places more accountability on bilingual education programs as a three-year transition.)

- iii. **Assessing English Proficiency.** Beginning in the 2002-2003 school year, local school districts must assess annually the English proficiency of LEP students, including their reading, writing, speaking and listening skills. However, the state may apply for a one-year extension upon a hardship showing of exceptional or uncontrollable circumstances.

(NOTE: This English student's proficiency assessment will be helpful in identifying a student's needs and the programs that will enable him/her to become proficient in English. It also can be helpful in determining whether a student's academic assessments should be in English and the testing accommodations that need to be made. This assessment of English usage is not a part of the student's academic assessment in determining AYP in reading/language arts.)

- c. **Migrant Students.** Migratory and other mobile students must be included in the state assessment (and the results must be reported) even though they "may" not be counted for accountability purposes (i.e. migrant students

take the assessment and the results are reported, but their results are not counted for a state's, school district's, or school's AYP if they are not enrolled in that respective entity for the full academic year.)

[NOTE: At the school district level, migrant students' achievement results are reported as a group. They are included for school district accountability purposes (AYP) only if they attend schools in the district for a full academic year. However, in determining accountability, they are not counted as a group, but as a part of the general population. For accountability purposes, they may also qualify as a member of one of four special accountability groups (i.e., students who have disabilities, LEP students, members of major ethnic groups, or children in poverty).]

- d. *Homeless Students.* Homeless students must participate in the assessment, and in determining whether a school district and school meet Adequate Yearly Progress. However, data for homeless students do not need to be disaggregated for separate reporting as a group.

[NOTE: In determining accountability (AYP), in general, a school does not include students whom it does not enroll for the full academic year. In such cases, the school district would count students who attend more than one school, but are still enrolled within its jurisdiction for the full year and had attended several of its schools.]

## **7. Disaggregation Of Data**

(NOTE: Just as the law requires states to identify groups, subgroups may also be identified. For example, there may be multiple subgroups of students under the general groups of ethnic or LEP students.)

A state may not use disaggregated data for a subgroup for report cards or for determining accountability (i.e., whether a school needs improvement, corrective action, or restructuring), if the number of students comprising the subgroup is too small to provide statistically reliable information. The state must determine that the minimum number needed for statistical reliability for each of the purposes that the disaggregated data will be used. It must justify that number(s) in its state plan.

Additionally, disaggregated data for a subgroup cannot be used for reporting purposes if the results would reveal personally identifiable information about an individual student under the federal Family Educational Rights and Privacy Act of 1974. However, the privacy provisions will not prevent a determination to be made as to whether AYP is being met for those students (based on the separate measurable annual objectives that the state sets for their group).

## **8. Assessment Reports {§200.8}**

A state's assessment system must produce individual student reports, including their achievement in meeting the state's student achievement standard. These reports, which must be interpretive, descriptive, and diagnostic of the student's performance, must help parents, teachers, and principals understand the specific needs of students, and must be provided as soon after the assessment is administered as practicable. The report must be in an understandable and uniform format—including, to the extent practicable, in a language that parents can understand.

**9. Deferral Of Assessments {§200.9}**

A state may defer the start or administration of an assessment for one year if the federal appropriations earmark for state assessment grants is less than the trigger amount for that year. In such cases, the state must still develop the assessments.

**10. Application Of State Assessments To Private Schools {§200.10}**

Private schools are not required to participate in the state assessment, even if their students are served through the Title I program. If a school district provides Title I services to private school students, then it must, through timely consultation with the private school, determine how such services for Title I eligible students will be academically assessed and how those assessment results will be used to improve such services.

[NOTE: The school district has the sole authority, following consultation with the private school, to determine which assessment (e.g., the state assessment), to use as a means of assessing those services). Hence, while Title I students in private schools will not be assessed to determine the accountability of those schools for meeting AYP, the use of the state (or other) academic assessments may still provide information about how well Title I students are doing in that school.]