

**PROPOSAL TO ADDRESS  
ADEQUATE YEARLY PROGRESS  
FOR STUDENTS WITH DISABILITIES**

**Policy Statement:**

The State Education Department supports the overall goals of the No Child Left Behind Act (NCLB) to improve the educational outcomes for all students and to close the achievement gap between various subgroups of students, including those with disabilities. We support requirements of the Act calling for higher learning standards, assessments to measure student progress towards those standards, holding schools accountable for results and increased parental involvement. Schools and school districts must be held accountable for the performance of the subgroup of students with disabilities as it measures the overall performance of the school. This essential strategy will lead to improved instruction for students with disabilities.

The Department believes, however, that the NCLB and its implementing regulations conflict with the Individuals with Disabilities Education Act (IDEA) as NCLB does not take into account the range of instructional levels and abilities of students with disabilities that must be considered under the IDEA. NCLB recognizes that there is a small group of students (one percent of the total population tested) with “significant cognitive disabilities” who are able to be counted as proficient on an alternate assessment based on alternate achievement standards. New York State data show, however, that there is a substantially larger group of students with disabilities who have significant cognitive disabilities who are not able to meet grade/age level expectations even with appropriate instructional programs and supports. These are students who, because of their cognitive and intellectual limitations, are participating in a general education curriculum several grade levels behind their nondisabled peers. These students, by the nature of their significant cognitive disabilities, may never meet proficiency standards under the current accountability requirements of NCLB. Until there is a recognition of the significant cognitive disabilities of this larger group of students, school buildings and districts will continue to be identified as not making adequate yearly progress (AYP) because these students have not improved in the general education curriculum as measured on state assessments at the same rate and/or to the same level as required for nondisabled students.

Accountability measures for students with disabilities must appropriately measure academic performance and continue to require schools to focus on improving performance of students with disabilities without unfairly penalizing the schools and school districts they attend.

## **Goals:**

The goals of this proposal are to:

- ensure meaningful participation of all students with disabilities in state and district-wide assessments at the instructional grade levels determined by the Committee on Special Education to be appropriate for the students;
- ensure that the performance results of those students are fairly and appropriately considered for purposes of AYP under NCLB;
- ensure meaningful rates of achievement progress for students with disabilities to determine AYP; and
- focus the process for calculating AYP only on measures of improved student achievement rather than on other indicators that are not directly related to the primary reason a subgroup was identified.

## **Recommendations:**

The following proposed changes to IDEA and NCLB, *when implemented in total*, are expected to result in a fair, yet challenging system of accountability for the subgroup of students with disabilities.

- 1. Provide that student results on assessments that measure performance toward the state's standards at the student's appropriate instructional grade-level be recognized by NCLB for purposes of determining AYP.**

NCLB authorizes states to consider the results of alternate assessments of a limited percentage of students with significant cognitive disabilities. This is not consistent with IDEA, which recognizes that students with disabilities need to be participating and progressing in the general curriculum, but that some students with disabilities, even with supplementary supports and services and testing accommodations, may not be able to participate at the same instructional level of the general curriculum as nondisabled students and in the same state and district-level assessments as their nondisabled peers. These are the students who, because of achievement and learning characteristics directly related to their significant cognitive disabilities, require content area instruction at least three or more grade levels behind their nondisabled peers in one or more content areas. Subjecting students at specific chronological ages to grade-level assessments that are measuring skills well beyond their capabilities and instructional levels is not true participation and does not provide meaningful data to measure progress towards the standards. Holding schools and school districts accountable for unreasonable achievement standards does not recognize the true value of a student's educational program and does not serve to challenge schools to improve results for students with disabilities.

- 2. Authorize states to establish the threshold on the percent of students with disabilities scoring at the proficient and advanced levels on alternate assessments, including instructional-level assessments, for purposes of determining AYP, provided that justification must be given to the USDOE when a state's threshold exceeds three percent of the total population tested.**

NCLB and its implementing regulations allow a state to include in its calculations of AYP the proficient and advanced scores of students with the most significant cognitive disabilities based on alternate assessments, provided that such scores do not exceed one percent of all students tested in the grades assessed in reading/language arts and in mathematics. A waiver of the one percent limit requires documentation to the federal Department of Education of extraordinary circumstances. As indicated above, we believe that the number of students whose significant cognitive disabilities substantially limit their ability to perform at the same grade levels as their chronological peers is greater than that assumed by the current regulations. Assessment data show that, even in low and average need school districts, between two to three percent of the total population tested are students with disabilities with intellectual and cognitive disabilities who may require instructional-level assessments based upon the State's standards.

In order to more appropriately hold schools accountable for AYP for students with disabilities, we propose that each state educational agency (SEA) establish the limit on the total percentage of students in the grades assessed in the required State academic assessments whose scores at the proficient and advanced levels on such alternate assessments, including instructional-level assessments, may be used for purposes of calculating AYP. If the proposed limitation established by the State exceeds three percent, the state educational agency would be required to provide justification in its State plan developed pursuant to section 1111 of the Elementary and Secondary Education Act that documents why there is a greater percentage of students with disabilities who require alternate assessments, including instructional-level assessments. A state educational agency may grant a waiver to a local educational agency permitting it to exceed its established threshold only if a similar justification is provided.

- 3. For purposes of "safe harbor," a lower expected threshold for improvement for students with disabilities should be established at the federal level or SEAs should be given authority to establish their own realistic and appropriate benchmark targets for incremental performance improvement for students with disabilities to be applied uniformly at the state, district and school levels.**

Under the safe harbor provisions in current law, one of the factors that would lead a school to make AYP, and thus not be identified as a school in need of improvement, is if the percentage of students with disabilities who did not meet or exceed the proficient level of academic achievement on the state assessments for that year decreased by 10 percent of that percentage from the preceding year. Because of

factors such as levels of intellectual functioning, adaptive behavior, and varying rates of progress in acquiring skills and information and learning styles, all students with disabilities do not learn at the same rate as their nondisabled peers. It is essential that states like New York that have set challenging proficiency standards for all their students not be unfairly penalized because students with disabilities cannot progress toward meeting these standards at the same rate as their nondisabled peers while other states meet AYP as a result of their lower proficiency standards for all students. The Elementary and Secondary Education Act (ESEA) should be amended to either establish a lower expected threshold for improvement for students with disabilities or SEAs must have authority to establish their own realistic and appropriate benchmark targets for incremental performance improvement for students with disabilities to be applied uniformly at the state, district and school levels.

**4. Base the calculation of AYP in English language arts and mathematics only on measures of achievement in those areas.**

In order for a group of students to make AYP in language arts or math through the safe harbor provision, NCLB requires that the group (e.g., students with disabilities) must also make progress on one or more of the third academic indicators selected by the state. If the purpose of the safe harbor provision is to demonstrate improvement toward challenging academic standards, schools should not be penalized if the group of students does not make progress toward other indicators, many of which may not be relevant to students with disabilities (e.g., decreases in grade-to-grade retention and changes in the percentage of students completing gifted and talented, advanced placement and college preparatory courses).