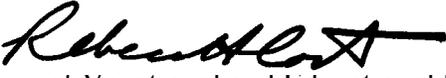
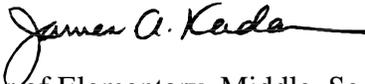




November 2005

**To:** District Superintendents  
Superintendents of Public Schools  
Superintendents of State-Operated and State-Supported Schools  
SETRC Professional Development Specialists  
Commissioner's Advisory Panel for Special Education Services

**From:** Rebecca H. Cort   
Deputy Commissioner of Vocational and Educational Services for Individuals with Disabilities

James A. Kadamus   
Deputy Commissioner of Elementary, Middle, Secondary and Continuing Education

**Subject:** Interim Supplemental Guidelines for Participation of Students with Disabilities in State Assessments for 2005-06

This memorandum provides new interim supplemental guidelines regarding the participation of students with disabilities in State assessments for the 2005-06 school year only, pending further action by the United States Department of Education (USDOE) regarding modified standards and assessments. Since the locally selected assessment option is no longer available, these new guidelines are necessary to meet accountability requirements under the No Child Left Behind (NCLB) Act and to ensure that all students with disabilities are appropriately included in the State assessment program.

The evaluation and individualized education program (IEP) provisions of the Individuals with Disabilities Education Act (IDEA) place great emphasis on the involvement and progress of children with disabilities in general curriculum and inclusion in State assessments. The term "general curriculum" means the same general education curriculum that is used with nondisabled children (8 NYCRR 200.1(t)). In New York State, all students with disabilities must be participating in instruction, based on curriculum designed to achieve the learning standards at the appropriate performance level for the student. This is required regardless of where a student attends school or the type of school he or she attends (i.e., public or approved private school, board of cooperative educational services (BOCES) program or State-operated/State-supported school).

Most students with disabilities are recommended by Committees on Special Education (CSEs) to participate in general State assessments and a small percentage of students with disabilities are recommended for participation in the New York State Alternate Assessment (NYSAA). There is another small group of students with disabilities who may need more time before their participation in the general State assessments and who do not meet the participation

criteria for NYSAA. However, these students are grade/age eligible for participation in grade 3-8 and high school State assessments and **must** participate in an assessment under federal and State law. These are students who, due to a performance gap resulting from the students' unique disability needs, are unable to meet the grade/age level expectations to take the regular State assessments and who do not meet the eligibility criteria for NYSAA.

The CSE may determine for State assessment purposes only that a student with a disability is either graded or ungraded. For students with disabilities who are ungraded for purposes of participation in State assessments, participation is based on their birth dates (see chart below). Please note that students who have been retained in the same grade in which they were enrolled during the previous school year and are receiving instruction at or near that grade level do not qualify for ungraded assessment status and must participate in the assessments required of students of the grade in which they are currently enrolled. In all cases, CSEs must ensure that parents understand what instruction, curriculum and assessment their child is receiving and the impact on graduation.

The student's IEP provides information on the student's current levels of knowledge and development in subject and skill areas. For the 2005-06 school year, this information will assist school administrators in consultation with parents and teachers in determining whether a student is ungraded for purposes of State assessments.

For State assessment and reporting purposes, a student with a disability who meets one of the following criteria may be considered and reported as ungraded for State assessment purposes:

- A student who is eligible to participate in NYSAA. An ungraded student with severe cognitive disability who is eligible for NYSAA should participate at the age specified in the September 2005 memorandum, *Registration of Students for the 2005-06 New York State Alternate Assessment (NYSAA) by October 31, 2005*.
- A student who is not eligible for NYSAA but whose instructional level is significantly below (three or more years) the grade-level coursework in English language arts (ELA) and mathematics of their nondisabled peers. This is a student who, because of such factors as cognitive deficits or intellectual capacity, is not able to meet typical age/grade level expectations even with appropriate instructional programs and supports. The nature or severity of the student's disability is such that, even with the use of supplementary aids and services, the student has a significant gap (three or more years) resulting from his or her disability between the curriculum the student is receiving based on his/her academic performance level and the curriculum generally appropriate for non-disabled students of the same age. The determination that a student is ungraded must be made by the CSE and reflected on the student's IEP. The decision should not be based solely on such factors as the student's category of disability, excessive or extended absences unrelated to the disability, language differences or cultural or environmental factors. Ungraded status is not determined by where a student is receiving his/her special education services but by the level of instruction the student is receiving as documented on the IEP. For example, a student may be receiving special education supports and services in a Grade 6 classroom with his/her nondisabled peers but be participating in a modified curriculum and the student's instructional level in ELA and mathematics is at Grade 3 level. This student could be considered ungraded for purposes of participation in the State assessment program and assessed according to his or her birth date.

## 2005-06 Guidelines for Testing Ungraded Students Who Are Not Eligible for NYSAA

Students who meet the criteria for ungraded for State assessment purposes as explained above and who are not eligible for NYSAA may participate in the State general assessment program based on their birth date as shown in the chart below. Students designated as “ungraded” must take all required assessments based on the range of birth dates indicated below, i.e., students may not take tests at two different levels in the same year.

### Age Ranges and Assessments for the 2005-06 School Year for Ungraded Students with Disabilities Who Are Not Eligible for NYSAA

Student’s Date of Birth	Required Assessments
July 1, 1995 and thereafter	No required assessments during this school year.
July 1, 1994–June 30, 1995	Grade 3 ELA, Mathematics
July 1, 1993–June 30, 1994	Grade 4 ELA, Mathematics, Science
July 1, 1992–June 30, 1993	Grade 5 ELA, Mathematics, Social Studies
July 1, 1991–June 30, 1992	Grade 6 ELA, Mathematics
July 1, 1990–June 30, 1991	Grade 7 ELA, Mathematics
July 1, 1989–June 30, 1990	Grade 8 ELA, Mathematics, Science, Social Studies

We anticipate that a very small number of students with disabilities will be designated as ungraded. As information becomes available from USDOE on the 2% flexibility for students with disabilities taking modified assessments and how these students will be counted under NCLB for accountability purposes, further information will be disseminated to the field.

Please share this memorandum with appropriate staff including Directors of Special Education, CSE Chairpersons, Directors of Pupil Personnel Services and Principals. If you have questions regarding test administration and ordering of State assessments, please contact the Office of State Assessment at (518) 474-5099. If you have any questions regarding data collection and reporting, please contact the Office of Information and Reporting Services at (518) 474-7965. All other questions may be directed to the Special Education Policy and Partnerships Unit at (518) 473-2878 or your Regional Associate at one of the following Special Education Quality Assurance Regional Offices:

Central New York Regional Office (315) 428-3287  
Eastern Regional Office (518) 486-6366  
Hudson Valley Regional Office (914) 245-0010  
Long Island Regional Office (631) 884-8530  
New York City Regional Office (718) 722-4544  
Western Regional Office (585) 344-2002

c: Big 5 Data Coordinators  
RIC Directors