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Alternate Assessments for Students with Disabilities

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Summary

The 113th Congress is actively considering whether to amend and extend the Elementary and Secondary Education Act (ESEA, P.L. 107-110). As part of these deliberations, consideration has been given to how students with disabilities are included in accountability systems. The ESEA and the Individuals with Disabilities Education Act (IDEA, P.L. 108-446) both require all students with disabilities to participate in district and state assessments. Because student achievement on state assessments is used to determine adequate yearly progress (AYP) in state accountability systems mandated by the ESEA, schools are held accountable for the achievement of all students, including students with disabilities.

While many students with disabilities are able to participate in the general state assessments, either with or without accommodations, other students with disabilities may not be able to participate fully in the general state assessment because of the nature or severity of their disability. These students may need an alternate assessment that is tailored to their needs to allow them to accurately demonstrate what they know and can do. In response to these needs, the U.S. Department of Education (ED) created five assessment options for measuring the achievement of students with disabilities through regulations, including two options that allow students to take an alternate assessment (AA), one based on *alternate* achievement standards (AA-AAS) and the other based on *modified* achievement standards (AA-MAS). There are restrictions on how the performance of students participating in AA-AAS or AA-MAS assessments are included in state accountability systems. Specifically, the regulations limit the number of proficient and advanced scores based on these alternate assessments that may be included in the determination of AYP. The number of proficient and advanced scores based on AA-AAS may not exceed 1% of all students in the grades assessed in reading and in mathematics within the state accountability system. Similarly, the number of proficient and advanced scores based on AA-MAS may not exceed 2% of all students in the grades assessed in reading and in mathematics within the state accountability system. These limits are commonly referred to as the "1% and 2% caps or rules."

ED is currently engaged in an examination of the regulations related to AA-MAS and has proposed eliminating the use of AA-MAS entirely. Currently, 42 states, the District of Columbia, and Puerto Rico have had their applications for an ESEA flexibility package approved by ED. Under this package, states have been granted waivers of ESEA accountability requirements in exchange for meeting principles specified by ED. As part of these principles, no later than the 2014-2015 school year, states operating under the ESEA flexibility package must include students who are currently eligible to take AA-MAS in their assessments based on grade-level academic achievement standards. Thus, 42 states, the District of Columbia, and Puerto Rico will no longer be able to administer AA-MAS as of the 2014-2015 school year, regardless of when or if ED enacts the aforementioned proposed regulations.

This report focuses primarily on current law and state and local implementation of alternate assessments in state accountability systems, including the challenges in developing and implementing these assessments and an analysis of recommended changes to assessment policies for students with disabilities. In addition, it highlights some issues that may arise due to changes made by ED through waivers of ESEA accountability requirements and the associated conditions that states must meet to receive the waivers. This report does not reflect ED's proposal to eliminate AA-MAS and require states to start transitioning away from the use of AA-MAS in the near future, as the proposed changes have not been adopted.

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Introduction

The Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB, P.L. 107-110), and the Individuals with Disabilities Education Act (IDEA, P.L. 108-446) both require all students with disabilities to participate in district and state assessments.[1] Because student achievement on state assessments is used to determine adequate yearly progress (AYP) in state accountability systems mandated by ESEA, schools are now held accountable for the achievement of all students, including students with disabilities. The 113th Congress is actively considering whether to amend and extend the ESEA. As part of these deliberations, consideration has been given to how students with disabilities are included in accountability systems.[2]

The NCLB focus on accountability for the achievement of students with disabilities led educators, administrators, and policy makers to reexamine the appropriateness of the general state assessment for measuring the achievement of certain students with disabilities. Although many students with disabilities are able to participate in the general state assessment, either with or without accommodations, other students with disabilities may not be able to participate fully in the general state assessment because of the nature and severity of their disability. These students may need an alternate assessment that is tailored to their needs and allows them to more accurately demonstrate what they know and can do.

There are currently five assessment options for measuring the achievement of students with disabilities: (1) general state assessment, (2) general state assessment with accommodations, (3) alternate assessment based on *grade-level* standards, (4) alternate assessment based on *alternate* achievement standards (AA-AAS), and (5) alternate assessment based on *modified* achievement standards (AA-MAS). The first three assessment options (general state assessment, general state assessment with accommodations, and alternate assessment based on grade-level standards) result in scores that may be counted in AYP calculations in the typical manner, as determined by a state's accountability system.[3] Scores from the second two assessment options (AA-AAS and AA-MAS) have restrictions on the way they may be counted in AYP calculations. These restrictions are outlined in regulations issued by the U.S. Department of Education (ED) and have numerous implications for state accountability systems.

In August 2013, ED proposed regulations that would require states to transition away from AA-MAS.[4] In addition, in September 2011, the Secretary announced that states may request flexibility on various ESEA academic accountability requirements, teacher qualification-related requirements, and funding flexibility requirements that were enacted through the No Child Left Behind Act of 2001 (NCLB; P.L. 107-110) in exchange for meeting four principles established by

[1] For more information on assessments in elementary and secondary education, see CRS Report R40514, *Assessment in Elementary and Secondary Education: A Primer*, by (name redacted).

[2] For an overview of NCLB reauthorization issues, see CRS Report R43146, *ESEA Reauthorization Proposals in the 113th Congress: Comparison of Major Features*, by (name redacted) et al.

[3] For more information on AYP, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by (name redacted).

[4] In August 2013, ED published proposed regulations to end the use of AA-MAS. To read the proposed regulations, see https://www.federalregister.gov/articles/2013/08/23/2013-20665/title-i-improving-the-academic-achievement-of-the-disadvantaged. This report discusses the current regulations, which include AA-MAS. However, if new regulations on the use of AA-MAS are published this report will be updated to reflect them.

ED. The four principles, as stated by ED, are as follows: (1) college- and career-ready expectations for all students; (2) state-developed differentiated recognition, accountability, and support; (3) supporting effective instruction and leadership; and (4) reducing duplication and unnecessary burden.[5]

As of March 5, 2014, ED had approved ESEA flexibility package applications for 42 states, the District of Columbia, and Puerto Rico.[6] Similar flexibility was also provided to a group of LEAs in California. Under the ESEA flexibility package, states are required to provide for alternate assessments based on grade-level academic achievement standards or alternate assessments based on alternate academic achievement standards for the students with the most significant cognitive disabilities. These assessments must be aligned with the state's college- and career-ready standards. No later than the 2014-2015 school year, states operating under the ESEA flexibility package must include students who are currently eligible to take alternate assessments based on modified academic achievement standards in their assessments based on grade-level academic achievement standards. Thus, 42 states, the District of Columbia, and Puerto Rico will no longer be able to administer alternate assessments based on modified academic achievement standards as of the 2014-2015 school year, regardless of when or if ED enacts the aforementioned proposed regulations.[7]

As none of the aforementioned changes have been promulgated through statutory language or regulation, this report focuses primarily on the current ED regulations that allow states to use scores from alternate assessments for AYP calculations in accountability systems. It does, however, highlight some issues that may arise due to the proposed regulations and the issuance of the ESEA flexibility package. This report also describes the current status of state implementation of alternate assessments and examines some of the challenges states have encountered in developing and implementing these assessments. This is followed by a discussion of other policy proposals for measuring the achievement of students with disabilities and including them in accountability systems. The report concludes with a brief examination of ESEA reauthorization activity in the 113th Congress as it relates to alternate assessments.

Brief Legislative History of Alternate Assessments

Including students with disabilities in state assessments is a relatively new practice. As recently as the 1990s, students with disabilities were often excluded from general state assessments. The Improving America's Schools Act of 1994 (IASA, P.L. 103-382) and IDEA of 1997 (P.L. 105-17) were the first pieces of federal legislation that mandated the participation of students with disabilities in state assessments.[8] By mandating participation of students with disabilities in state assessments, the legislation sought to increase access to the general education curriculum for

[5] For more information on the Secretary's announcement and to see details of the waiver package, see http://www.ed.gov/esea/flexibility. See also CRS Report R42328, *Educational Accountability and Secretarial Waiver Authority Under Section 9401 of the Elementary and Secondary Education Act*, by (name redacted) and (name redacted).

[6] Approved state applications and pending applications are available at http://www.ed.gov/esea/flexibility.

[7] U.S. Department of Education, ESEA Flexibility: Frequently Asked Questions, item C-15, available online at http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html.

[8] Legislation mandated the participation of students with disabilities in district-wide assessments as well. Because the focus of this report is on state assessments used in AYP calculations, the practice of including students with disabilities in state assessments is highlighted.

students with disabilities and, in turn, increase expectations and achievement of students with disabilities.

The use of alternate assessments within state assessment systems is also relatively new. In 1997, IDEA required states to develop alternate assessments for students with disabilities for whom the general state assessment was inappropriate. The alternate assessment was intended to be a more accurate measure of what some students with disabilities know and can do. Alternate assessments were intended to decrease the barriers of the general state assessments and allow students with disabilities to demonstrate their knowledge more accurately.

Several years after IASA and IDEA required students with disabilities to participate in state assessments, the No Child Left Behind Act of 2001 (NCLB) greatly increased the emphasis on student assessment, and the academic achievement of students with disabilities gained more attention. Under NCLB, student scores on state assessments are used to measure AYP. Scores on these assessments must be disaggregated by various subgroups, one of which is students with disabilities. Although NCLB requires states to develop at least one alternate assessment to use within their state assessment systems, the law did not explicitly outline how the alternate assessments should be used within an accountability system.

The combination of the requirement to include all students with disabilities in state assessment systems and NCLB's requirement that all subgroups of students meet AYP goals created a need for states to have more accurate assessments for all students with disabilities, including students with the most significant cognitive disabilities and other students with disabilities who were not expected to meet grade-level achievement standards within the academic year. For these students with disabilities, an alternate assessment may be more appropriate than the general state assessment. Because of the NCLB requirement to develop at least one alternate assessment, many alternate assessments were already used by states. Nonetheless, questions remained about who should be eligible to take alternate assessments and how scores from alternate assessments should be counted within state accountability systems.

To address these concerns, ED released regulations outlining the use of two types of alternate assessments for students with disabilities: alternate assessments based on *alternate* achievement standards (AA-AAS) and alternate assessments based on *modified* achievement standards (AA-MAS). The regulations provide guidance to states on how to determine a student's eligibility for participation in alternate assessments and how to count scores from alternate assessments in state accountability systems.

Alternate Assessments: Description and Regulations

An alternate assessment is an assessment designed for students with disabilities for whom the general state assessment is inappropriate even when they are provided with appropriate accommodations. It is designed to be a more accurate measure of what students with disabilities know and can do. Alternate assessments differ from general state assessments in both form and complexity. The form of an alternate assessment varies depending on the needs of the student. The assessment may include teacher observation of the student, samples of student work that demonstrate mastery of specific content (e.g., portfolio assessment), performance on tasks produced in an "on-demand" setting (e.g., performance assessment), or other methods of collecting data on student achievement.

An alternate assessment is developed by adapting two parameters of the general state assessment: content standards and achievement standards. A *content standard* specifies what all students should know and be able to do. Content standards describe what teachers should be teaching and what students should be learning in academic areas, such as reading, mathematics, and science. An *achievement standard* is a predetermined level of performance that denotes proficiency within a given content area. Achievement standards describe how well a student must perform in order to be proficient within a content area. Determining achievement levels requires that achievement standards describe the competencies associated with varying levels of proficiency and set "cut scores" that categorize students into these levels. An example of a content standard for elementary mathematics may be: "Know the addition facts (sums to 20) and the corresponding subtraction facts and commit them to memory." The corresponding achievement standard may be a level of mastery that defines proficiency (e.g., number correct, 80% accuracy, 90% accuracy, and so on).

Understanding the difference between content standards and achievement standards is essential to understanding the way different types of alternate assessments are developed. ED regulations regarding the design of alternate assessments describe different methods for developing alternate assessments that vary according to (1) when it is appropriate to adapt and extend content standards *and* achievement standards, and (2) when it is appropriate to adapt *only* the achievement standards. In general, in AA-AAS, it is appropriate to adapt and extend content standards and achievement standards; in AA-MAS, it is appropriate to adapt only the achievement standards.

ED issued two sets of regulations concerning the development of alternate assessments and their use in state accountability systems. In December 2003, ED finalized NCLB regulations that authorized states to use results from AA-AAS in AYP calculations for students with the most significant cognitive disabilities.[9] Later, in April 2007, ED finalized NCLB regulations that authorized states to use results from AA-MAS in AYP calculations for other students with disabilities who were unlikely to reach grade-level proficiency within a year.[10] The following sections describe the regulations issued by ED concerning the development of AA-AAS and AA-MAS and their use in state accountability systems. In addition, **Appendix A** provides a table that summarizes the similarities and differences between AA-AAS and AA-MAS.

Alternate Assessments Based on Alternate Achievement Standards

AA-AAS are assessments designed to measure the academic achievement of students with the most significant cognitive disabilities. A state that uses AA-AAS must develop alternate achievement standards through a "documented and validated standards setting process," and ensure that the standards (1) are aligned with the state's academic content standards, (2) promote access to the general curriculum, and (3) reflect professional judgment of the highest achievement standards possible.[11] AA-AAS are subject to the same technical standards as the general state

[9] U.S. Department of Education, "Title I – Improving the Academic Achievement of the Disadvantaged; Final Rule," 68 *Federal Register* 236, December 9, 2003.

[10] U.S. Department of Education, "Title I – Improving the Academic Achievement of the Disadvantaged; Individuals with Disabilities Education Act (IDEA); Final Rule," 72 *Federal Register* 67, April 19, 2007.

[11] 34 C.F.R. §200.1(d).

assessment, including the need for them to meet professional and technical standards for validity and reliability.[12]

AA-AAS may cover a narrower range of content and have a different set of expectations than the general state assessment based on grade-level expectations. The *content standards* of AA-AAS may be "extended" so that students with the most significant cognitive disabilities may be tested on content that is aligned with grade-level content standards but not fully representative of grade-level content standards. The content standards of the AA-AAS may be "substantially simplified" and may include prerequisite skills that would be necessary to master grade-level content. The *achievement standards* of AA-AAS may differ from a grade-level achievement standard in the level of expectation that is necessary to denote proficiency. Alternate achievement standards are subject to the same requirements as other academic achievement standards. That is, alternate achievement standards must be aligned with the state's academic content standards, describe at least three levels of achievement, include descriptions of the competencies associated with each level, and include assessment scores (cut scores) that differentiate among the achievement levels.[13] A state may choose to develop alternate achievement standards for grade clusters (e.g., 3-5, 6-9, or 10-12) rather than for individual grades.

AA-AAS are used to assess students with disabilities[14] who have the "most significant cognitive disabilities." IDEA does not provide a federal definition of "significant cognitive disability," and students within any of the disability categories may be eligible to participate in AA-AAS.[15] ED describes students with the most significant cognitive disabilities as students who are "(1) within one or more of the existing categories of disability under the IDEA (e.g., autism, multiple disabilities, traumatic brain injury, etc.); and (2) whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction."[16] ED estimates that approximately 9% of students with disabilities (approximately 1% of all students) have the most significant cognitive disabilities that may qualify them to participate in AA-AAS.

States are responsible for defining "most significant cognitive disability" and establishing criteria to identify the students with disabilities who are eligible to participate in AA-AAS. Based on guidance issued by the state, the final determination of eligibility for AA-AAS is made by a student's Individualized Education Program (IEP) team.[17] In addition to providing guidance on

[12] 34 C.F.R. §§200.2(b) and 200.3(a)(1).

[13] 34 C.F.R. §200.1(c).

[14] As defined by IDEA, §620(3).

[15] Under IDEA, the term "child with a disability" includes a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), deaf-blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, specific learning disability, multiple disabilities, other health impairments, or developmental delay. Note that "developmental delay" is restricted within the law to include only children between the ages of six and nine years old. Students in any of the IDEA disability categories would be eligible to participate in AA-AAS if they met state criteria for "most significant cognitive disability."

[16] U.S. Department of Education, *Alternate Achievement Standards for Students with the Most Significant Cognitive Disabilities*, Non-Regulatory Guidance, August 2005, p. 23, http://www.ed.gov/policy/elsec/guid/altguidance.pdf.

[17] An IEP is a written statement for each student with a disability that includes a description of the special education and related services required by a student with a disability. For a complete description of the elements of an IEP, see IDEA §614(d)(1)(A). An IEP team is a group of individuals who develop, review, and revise the IEP for a student with a disability. The IEP team includes, at minimum, a parent of the child, one general educator, one special educator, a public representative who is qualified to provide or supervise the delivery of individualized instruction, and an individual who can interpret the instructional implications of evaluation results. Other individuals may be included as (continued...)

the students who may appropriately participate in AA-AAS, the state must (1) ensure that parents of those students are informed that their child's achievement will be based on alternate achievement standards, and (2) report to ED on the number and percentage of students taking alternate assessments.

ED regulations do not limit the number or percentage of students who may participate in AA-AAS. The regulations do, however, limit the number of proficient and advanced scores based on AA-AAS that may be used in AYP calculations within a state accountability system. The number of proficient and advanced scores based on AA-AAS may not exceed 1% of all students in the grades assessed in reading/language arts and in mathematics within the state accountability system.[18] This regulation is often referred to as the "1% rule" or the "1% cap," and it represents approximately 9% of all students with disabilities. The 1% cap applies to both LEAs and states but not to individual schools. Under certain circumstances, however, an LEA may request an exception from the state to exceed this cap.[19]

The 1% cap was developed through a process of proposed rules and public comment that occurred between August 2002 and December 2003. On August 6, 2002, ED first proposed that the number of proficient and advanced scores based on AA-AAS included in AYP calculations may not exceed 0.5% of all students in the grades assessed.[20] The "0.5% cap" became a final rule on December 2, 2002.[21] The 0.5% cap was based on scientific estimates of the prevalence of moderate, severe, and profound mental retardation. Moderate, severe, and profound mental retardation are often defined as intellectual functioning and adaptive behavior that are three or more standard deviations below the mean. At that time, ED proposed an operational definition of "students with the most significant cognitive disabilities" to mirror that of moderate, severe, and profound mental retardation (i.e., students with intellectual functioning and adaptive behavior three or more standard deviations below the mean). Many commenters objected to the 0.5% cap, citing state and LEA variation in the prevalence of students with the "most significant cognitive disabilities." Based on these comments, ED proposed raising the cap to 1% of all assessed students.[22] In addition, many commenters objected to the proposed operational definition of students with the "most significant cognitive disabilities" because of its implicit reliance on IQ tests (measuring "intellectual functioning" usually involves the use of traditional IQ tests). ED

(...continued)

part of an IEP team, including the student with a disability if appropriate, at the discretion of the parent or public agency. For a complete description of the IEP team, see IDEA §614(d)(1)(B).

[18] Under the ESEA flexibility package, states and LEAs may request a waiver that no longer requires them to make AYP determinations. However, states must continue to apply the 1% cap in making accountability determinations, as there are other accountability determinations beyond those associated with AYP that must be made. (For more information, see U.S. Department of Education, ESEA Flexibility: Frequently Asked Questions, items B-11 and B-11a, available online at http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html.)

[19] Exceptions to the 1% cap are discussed in a future section: "Exceptions to the 1% Cap and 2% Cap;" 34 CFR Part 200 regulations dated December 9, 2003, originally allowed states to request a waiver to the 1% cap. In 34 CFR Part 200 regulations dated April 19, 2007, however, the rule was changed and states are no longer permitted to request an exception to exceed the 1% cap.

[20] U.S. Department of Education, "Title I – Improving the Academic Achievement of the Disadvantaged; Proposed Rule," 67 *Federal Register*, August 6, 2002.

[21] U.S. Department of Education, "Title I – Improving the Academic Achievement of the Disadvantaged; Final Rule," 67 *Federal Register*, December 2, 2002.

[22] For a summary of the scientific evidence used to support the "0.5% cap," see U.S. Department of Education, "Title I – Improving the Academic Achievement of the Disadvantaged; Proposed Rule," 68 *Federal Register* 13798-13799, March 20, 2003.

agreed that the definition would have placed unwarranted reliance on IQ tests and removed it. The final regulations maintained the 1% cap and removed the operational definition, allowing states to develop their own criteria for students with the "most significant cognitive disabilities."[23]

Alternate Assessments Based on Modified Achievement Standards[24]

AA-MAS are assessments designed to measure the academic achievement of students with disabilities whose disabilities may prevent them from achieving grade-level proficiency within a year but who do not have the "most significant cognitive disabilities." A state that uses AA-MAS must develop modified achievement standards that (1) are aligned with the state's academic content standards for the grade in which the student is enrolled, (2) are challenging for eligible students, but may be less difficult than the grade-level academic achievement standards, (3) include at least three achievement levels, and (4) are developed through a documented and validated standards-setting process that includes broad stakeholder input.[25] Many states found it difficult to understand how the requirements for modified achievement standards could be met. Since the student population eligible for AA-MAS was never clearly defined, developing expectations that were both "challenging" but still "less difficult" for any eligible student was a formidable task, and likely was a contributing factor in some states' decisions not to implement AA-MAS.[26]

AA-MAS are subject to the same technical standards as the general state assessment, including the need for them to meet professional and technical standards for validity and reliability.[27] AA-MAS must be aligned with grade-level content standards. The *content standards* may not be "extended" or "substantially simplified," and they may not reflect prerequisite skills for grade-level content. AA-MAS must represent grade-level content standards. The assessment may, however, differ from the general state assessment in terms of the expectation of achievement (i.e., the achievement standard). The *achievement standards* of AA-MAS may differ from a grade-level achievement standard in the level of expectation that denotes proficiency. Modified achievement standards describe achievement expectations that are less difficult than grade-level expectations.

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[23] U.S. Department of Education, "Title I – Improving the Academic Achievement of the Disadvantaged; Final Rule," 68 *Federal Register* 236, December 9, 2003.

[24] As previously discussed, in August 2013, ED published proposed regulations to end the use of AA-MAS. (To read the proposed regulations, see https://www.federalregister.gov/articles/2013/08/23/2013-20665/title-i-improving-the-academic-achievement-of-the-disadvantaged.) In addition, 42 states, the District of Columbia, and Puerto Rico have had their applications for the ESEA flexibility package approved. No later than the 2014-2015 school year, states operating under the ESEA flexibility package must include students who are currently eligible to take alternate assessments based on modified academic achievement standards in their assessments based on grade-level academic achievement standards. Thus, 42 states, the District of Columbia, and Puerto Rico will no longer be able to administer alternate assessments based on modified academic achievement standards as of the 2014-2015 school year, regardless of when or if ED enacts the aforementioned proposed regulations. (For more information, see U.S. Department of Education, ESEA Flexibility: Frequently Asked Questions, item C-15, available online at http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html.)

[25] 34 C.F.R. §200.1(e).

[26] M.L. Thurlow, S.S. Lazarus, and S. Bechard (Eds.), Lessons learned in federally funded projects that can improve the instruction and assessment of low performing students with disabilities, National Center on Educational Outcomes, University of Minnesota, Minneapolis, MN, January 2013, http://www.cehd.umn.edu/NCEO/OnlinePubs/LessonsLearned.pdf.

[27] 34 C.F.R. §§200.2(b) and 200.3(a)(1).

An AA-MAS, therefore, covers the same grade-level content as the general state assessment, however, questions may be less difficult and the expectation of achievement can be modified. Modified achievement standards are subject to the same requirements as other academic achievement standards. They must be aligned with the state's academic content standards, describe at least three levels of achievement, include descriptions of the competencies associated with each level, and include assessment scores (cut scores) that differentiate among the achievement levels.[28] A state must develop modified achievement standards for each grade in which AA-MAS is implemented; it may not develop modified achievement standards for grade clusters (e.g., 3-5, 6-9, 10-12).

AA-MAS are used to assess students with disabilities as defined by IDEA[29] whose disabilities may prevent them from achieving grade-level proficiency within a year (the year covered by their IEP). Students in any of the disability categories described in IDEA may be eligible to participate in AA-MAS.[30] Beyond the requirement that a student have a disability, a state must establish additional criteria for IEP teams[31] to use in determining whether a student should participate in AA-MAS. At minimum, the criteria must include three types of evidence. First, there must be objective evidence that demonstrates the student's disability has precluded him or her from achieving grade-level proficiency. This evidence may include performance on prior years' state assessments or other assessments. Second, the student's progress to date in response to appropriate instruction must indicate that that the student would not meet grade-level proficiency within the academic year, even if significant growth were to occur. This determination is made by a student's IEP team using multiple measures of the student's progress. Third, the student's IEP must include goals that are based on the academic content standards for the grade in which the student is enrolled (i.e., the student must have a "standards-based IEP").

As with AA-AAS, ED regulations do not limit the number or percentage of students who may participate in AA-MAS. The regulations do, however, limit the number of proficient and advanced scores that may be used in AYP calculations within a state accountability system. The number of proficient and advanced scores based on AA-MAS may not exceed 2% of all students in the grades assessed in reading/language arts and in mathematics within the state accountability system. This regulation is often referred to as the "2% rule" or the "2% cap," and it represents approximately 20% of all students with disabilities.[32] The 2% cap applies to both LEAs and states but not to individual schools. Under certain circumstance, however, states and LEAs may exceed this cap.[33]

The 2% cap is based on several studies reporting that some students with disabilities, even when provided evidence-based instruction, may not achieve grade-level proficiency within an academic year. The studies estimated that the percentage of students with disabilities who may not reach

[28] 34 C.F.R. §200.1(c).

[29] IDEA, §602(3).

[30] See footnote 15.

[31] See footnote 17.

[32] Under the ESEA flexibility package, states and LEAs may request a waiver that no longer requires them to make AYP determinations. However, states must continue to apply the 1% and 2% caps in making accountability determinations, as there are other accountability determinations beyond those associated with AYP that must be made. (For more information, see U.S. Department of Education, ESEA Flexibility: Frequently Asked Questions, items B-11 and B-11a, available online at http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html.)

[33] Exceptions to the 2% cap are discussed in the section "Exceptions to the 1% Cap and 2% Cap."

grade-level proficiency is between 15% and 22%.[34] Again, the 2% cap translates into approximately 20% of all students with disabilities, which is reasonably similar to the results of the studies cited by ED.[35] During the public comment period on the proposed rules, some commenters stated that the 2% cap was too low, however, many commenters stated that the 2% cap was too high, citing data reported by the National Center on Educational Outcomes.[36] ED recognized that a greater number of studies to support the 2% cap was desirable, however, ED maintained that the 2% cap is appropriate and protects students with disabilities from being inappropriately assigned to participate in AA-MAS.[37]

Alternate Assessments in State Accountability Systems

The previous sections have discussed general features of alternate assessments, regulatory requirements for the development of AA-AAS and AA-MAS, eligibility for AA-AAS and AA-MAS, and the basic concept of the 1% cap and 2% cap. The following sections discuss in greater detail how the use of alternate assessments can affect the calculation of AYP in state accountability systems. First, exceptions to the 1% cap and 2% cap are discussed. The next section discusses a process called redistributing scores that states must use if they exceed the 1% cap or 2% cap. A hypothetical example is offered to illustrate how a state may calculate the 1% cap and 2% cap and redistribute scores if it has exceeded the caps. The final section discusses state reporting requirements concerning student participation in alternate assessments.

Exceptions to the 1% Cap and 2% Cap

As discussed earlier, the 1% cap refers to the number of proficient and advanced scores from AA-AAS that may count as proficient or advanced for AYP purposes. Similarly, the 2% cap refers to the number of proficient and advanced scores from AA-MAS that may count as proficient or advanced for AYP purposes. Under certain circumstances, an LEA or a state may exceed the 1% cap, the 2% cap, or both caps (i.e., the 3% total cap). Again, these caps do not apply to individual schools.

A state may grant an exception to the 1% cap for an LEA, provided that (1) the LEA documents that the incidence of students with the most significant cognitive disabilities exceeds 1% of all students in the grades assessed, (2) the LEA explains why the incidence exceeds 1% (e.g., special services within the LEA, or a small LEA in which even one student exceeds the 1% cap), and (3)

[34] Kristen L. McMaster, Doug Fuchs, and Lynn S. Fuchs, et al., "Responding to Non-responders: An Experimental Field Trial of Identification and Intervention Methods," *Exceptional Children*, vol. 71 (2005), pp. 445-463; Joseph K. Torgenson, A.W. Alexander, and Richard K. Wagner, et al., "Intensive Remedial Instruction for Children with Severe Reading Disabilities: Immediate and Long-term Outcomes from Two Instructional Approaches," *Journal of Learning Disabilities*, vol. 34 (2001), pp. 33-58; G. Reid Lyon, Jack M. Fletcher, and Lynn S. Fuchs, et al., "Learning Disabilities," in *Treatment of Childhood Disorders*, ed. E. Mash & R. Barkley, 3rd ed. (New York: Guilford Press, 2006), pp. 512-594.

[35] The studies in footnote 26 excluded students with the "most significant cognitive disabilities," therefore, the estimates of students with disabilities who may not reach grade-level proficiency are *in addition to* students with the "most significant cognitive disabilities."

[36] A.T. Clapper, A.B. Morse, and S.S. Lazarus, et al., *2003 State Policies on Assessment Participation and Accommodations for Students with Disabilities*, National Center on Educational Outcomes, Synthesis Report 56, Minneapolis, MN, 2005.

[37] U.S. Department of Education, "Title I – Improving the Academic Achievement of the Disadvantaged; Final Rule," 72 *Federal Register* 17765, April 19, 2007.

the LEA ensures that all students with disabilities continue to participate in state assessments. The state must regularly review the appropriateness of this exception.[38] The state may not grant an LEA an exception to the 2% cap unless the LEA is below the 1% cap, and the exception to the 2% cap may only be made in the amount that the LEA is below the 1% cap. In general, an LEA is not permitted to exceed a total of 3% of proficient and advanced scores from alternate assessments (AA-AAS plus AA-MAS) that may count as proficient or advanced for AYP purposes; however, if the LEA was granted an exception to the 1% cap, the LEA may exceed the 3% total cap by the amount of the 1% cap exception.

A state may not request from the Secretary of Education (Secretary) an exception to the 1% cap or the 2% cap. A state may, however, exceed the 2% cap provided that it is below the 1% cap.[39] A state may not exceed the 3% total cap under any circumstances.

Table 1 summarizes the regulations surrounding when states and LEAs may exceed the 1% cap, the 2% cap, and the 3% total cap.

Table 1. When May a State or LEA Exceed the 1% and 2% Caps?

	AA-AAS (1% Cap)	AA-MAS (2% Cap)	AA-AAS and AA-MAS (3% Cap)
State	Not permitted.	Only if a state is below the 1% cap, but cannot exceed the 3% cap.	Not permitted.
LEA	Only if granted an exception by the SEA.[a]	Only if LEA is below 1% cap, but cannot exceed 3% cap.	Only if granted an exception to the 1% cap by the SEA, and only by the amount of the exception.

Source: U.S. Department of Education, "Modified Achievement Standards," Non-Regulatory Guidance, July 20, 2007, (http://www.ed.gov/policy/speced/guid/nclb/twopercent.doc).

a. SEA=State Educational Agency

Redistributing Scores that Exceed the Cap

An LEA or state that exceeds either the 1% cap or 2% cap (without exception) must count all scores of students with disabilities in AYP calculations, including the scores that exceed the cap. However, a state must count the proficient and advanced scores that exceeded the cap as "non-proficient" for the purposes of AYP. In other words, if too many students have achieved proficient or advanced scores on AA-AAS and AA-MAS, the scores in excess of the allowable amount are treated as non-proficient scores. States must adopt a process for allocating these non-proficient scores in the AYP accountability calculations. The process of counting proficient and advanced scores as non-proficient scores for AYP purposes is called redistributing scores.

When the number of proficient and advanced scores exceeds the 1% cap or 2% cap, the state must redistribute these scores as non-proficient scores (hereinafter referred to as "redistributed non-proficient scores"). The state must count the redistributed non-proficient scores in each applicable

[38] 34 C.F.R §200.13(c)(5).

[39] A state may exceed the 2% cap if it is below the 1% cap without being granted an official exception from the Secretary.

AYP subgroup at the school, LEA, and state level. ED does not mandate a procedure in regulations for redistributing scores. ED's non-regulatory guidance, however, provides a reference that describes four methods a state may use to redistribute scores: (1) random assignment, (2) proportional, (3) strategic, and (4) predetermined school cap.[40] These four methods of redistributing proficient and advanced scores are described below; however, they do not represent all possible methods.

The random-assignment method selects proficient and advanced scores at random to become redistributed non-proficient scores. All proficient and advanced scores from alternate assessments would have an equal chance of being redistributed. This method is relatively easy to understand and communicate to educators, and it can be done using a computerized random-number generator. Over time, random assignment should be impartial and fair because each score has an equal chance of being selected. On the other hand, random assignment can seem unfair in the short term when the selection of scores is uneven in a particular year (i.e., even when random assignment is used, a school may be randomly assigned a much higher number of scores to redistribute than another school simply due to chance). In addition, this method may be difficult to implement in small LEAs due to the small number of scores resulting from alternate assessments.

The proportional method requires a redistribution of proficient and advanced scores in proportion to the number of students in an LEA or school that participated in alternate assessments. LEAs or schools that tested a larger number of students using alternate assessments would be required to redistribute a larger number of proficient or advanced scores. This method may deter LEAs or schools from inappropriately testing a large number of students using alternate assessments. However, it may also unfairly penalize LEAs or schools that serve a disproportionate number of students with disabilities, and therefore, *appropriately* test a disproportionate number of students using alternate assessments.

The strategic method redistributes proficient and advanced scores in a manner that will result in the maximum benefit for each school. Using this method, scores may be redistributed in a way that allows a school to have a better chance of meeting AYP. For example, scores from students who belong to the fewest number of subgroups may be redistributed because a non-proficient score may have less of a negative impact on AYP. Similarly, scores from students who belong to subgroups in no danger of missing AYP may be redistributed. This method may aid schools in meeting AYP, however, it is difficult to implement and may be perceived as unethical.

The predetermined school-cap method redistributes proficient and advanced scores based on a school's historical percentage of students with disabilities. This method may work well for schools with a relatively stable population of students; however, minor fluctuations in student attendance may make the implementation of this method difficult. In addition, using a predetermined school cap could potentially perpetuate inappropriate historical identification of students with disabilities in some schools (i.e., if a school has historically identified students with disabilities inappropriately, and a predetermined school cap is based on historical numbers of students with disabilities, the school may be incentivized to continue to identify students inappropriately).

[40] U.S. Department of Education, *Modified Academic Achievement Standards*, Non-Regulatory Guidance, July 20, 2007, p. 44, http://www.ed.gov/policy/speced/guid/nclb/twopercent.doc; Tiffany Martinez and Ken Olsen, *Distribution of Proficient Scores that Exceed the 1% Cap: Four Possible Approaches*, Mid-South Regional Resource Center, March 2004, ERIC# ED484423 at http://www.eric.ed.gov.

Appendix B provides a table that briefly summarizes the pros and cons of four methods for redistributing proficient scores that exceed the 1% and 2% caps. At times, it may be possible or beneficial for a state to use these methods in combination. For example, a state may choose to redistribute scores using a random-assignment method, which determines the number of scores per school that must be redistributed. At the school level, however, a strategic method could be employed to maximize the possibility that the school meets AYP goals.

Example: Calculating the Cap, Exceeding the Cap, and Redistributing Scores

The following example demonstrates how states and LEAs calculate the 1% cap and the process of redistributing proficient and advanced scores if the 1% cap is exceeded (without exception).[41] The 2% cap is calculated and enforced in a similar way.[42]

The 1% cap is calculated based on the number of students enrolled in the grades assessed for AYP. The grades assessed for AYP include grades 3 through 8 and one grade in high school (for this example, grade 10). If an LEA has a total enrollment of 10,000 students in grades 3 through 8 plus grade 10, no more than 100 proficient scores based on AA-AAS may count as proficient for AYP purposes. If the LEA had 150 students participate in AA-AAS, two scenarios could develop. In the first scenario, only 100 of the 150 students may obtain a proficient score. All of these scores would count as proficient in the calculation of AYP and the 1% cap would not be exceeded.[43] In the second scenario, all 150 students may obtain a proficient score. Only 100 of these scores may count as proficient scores in the calculation of AYP, and 50 of the proficient scores must be redistributed as non-proficient scores.[44] If the LEA does not receive an exception from the state, the LEA must redistribute 50 scores as non-proficient and count these redistributed non-proficient scores in AYP calculations for each applicable subgroup in the state accountability system.[45]

In the second scenario, participation in AA-AAS resulted in 150 proficient scores, and 50 scores must be redistributed as non-proficient scores for AYP purposes. In the hypothetical LEA above, suppose four schools were responsible for the scores from AA-AAS:

- School A: 50 proficient scores
- School B: 50 proficient scores
- School C: 25 proficient scores

[41] Throughout the example, "proficient and advanced" scores will be referred to as "proficient" scores.

[42] This example is adapted from U.S. Department of Education, *Alternate Achievement Standards for Students with the Most Significant Cognitive Disabilities*, Non-Regulatory Guidance, August 2005, pp. 32-35, http://www.ed.gov/policy/elsec/guid/altguidance.pdf. For a specific example on the 2% cap, see U.S. Department of Education , *Modified Academic Achievement Standards*, Non-Regulatory Guidance, July 2007, pp. 42-45, http://www.ed.gov/policy/speced/guid/nclb/twopercent.doc.

[43] If any number less than 100 students attained a proficient score, this scenario would be applicable.

[44] If any number between 101 and 150 students attained a proficient score, the number of scores exceeding 100 would be redistributed.

[45] Although the state is ultimately responsible for redistributing scores, the state has flexibility to permit LEAs to redistribute scores provided that the practice is consistent with state policy. The 1% cap also applies at the state level. The state may not exceed the 1% cap under any circumstances; therefore, all scores exceeding the 1% cap at the state level must be redistributed.

- School D: 25 proficient scores

The state may direct the LEA to redistribute scores using the random-assignment method. Using a random-assignment method, the following outcome is possible: School A must redistribute 16 scores, School B must redistribute 20 scores, School C must redistribute 8 scores, and School D must redistribute 6 scores. Essentially, any random combination of 50 scores could be redistributed.

The state may, instead, direct the LEA to redistribute scores using the proportional method. Using the proportional method, the number of redistributed scores depends on a proportion that reflects the number of scores that must be redistributed compared to the total number of scores. In this example, 50 of 150 scores must be redistributed, which would result in a proportion of 1 to 3 (50 to 150). One third of the scores from each school must be redistributed: School A must redistribute 17 scores, School B must redistribute 17 scores, School C must redistribute 8 scores, and School D must redistribute 8 scores.

Redistribution methods (i.e., the random-assignment method and the proportional method) determine how many scores must be redistributed, but they do not always determine which scores must be redistributed. After using either the random-assignment method or the proportional method discussed above, LEAs may use a strategic method to determine which scores to redistribute in order to maximize their chances of meeting AYP goals.

At the state level, the interaction of the 1% and 2% caps can make the redistribution of scores more complicated. **Appendix C** provides a hypothetical example of how scores are redistributed in a state that uses both AA-AAS and AA-MAS.

Reporting Requirements

States are required to report to the Secretary separately on the participation of students with disabilities in state accountability systems. Specifically, each state must report the number of students with disabilities participating in (1) general state assessments, (2) general state assessments with accommodations, (3) alternate assessments based on grade-level academic achievement standards, (4) AA-AAS, and (5) AA-MAS.[46] States are required to prepare two different sections in a "report card" format that address (1) assessment data and (2) accountability data. In the assessment-data section, the state should report on the actual scores received by students who participate in alternate assessments, even if proficient scores have become redistributed non-proficient scores for the purposes of AYP. In the accountability-data section, states should apply the 1% cap and 2% cap in reporting proficient and non-proficient scores. That is, if a student obtained a proficient score that was deemed to be outside of the 1% cap or 2% cap, the score should be reported as non-proficient.

States and LEAs are also required to report to parents, teachers, and principals. The state's assessment system, including its alternate assessments, must produce individual student reports that allow parents, teachers, and principals to understand and address specific needs of students. For these reports, states and LEAs must report the actual scores received by students participating in alternate assessments, even if a student's score became a redistributed non-proficient score. That is, if a student with a disability scored "proficient," but this score was deemed to be outside

[46] 34 C.F.R. §200.6(a)(4).

of either the 1% cap or 2% cap, the state and LEA must still report to the parents, teachers, and principals that the student's score was "proficient."

State and Local Implementation of Alternate Assessments in State Accountability Systems

In regulations dated December 9, 2003, ED stated that it intended "to issue a report on the implementation of this regulation after two years of implementation."[47] In response to this commitment, ED released a report from the Study of State Implementation of Accountability and Teacher Quality Under *No Child Left Behind* (SSI-NCLB).[48] The report presents findings concerning states' implementation of AA-AAS. The report's findings are based on surveys of state officials in school years 2004-2005 and 2006-2007, as well as extant data about states' implementation of NCLB assessment and accountability requirements. At the time of data collection, ED regulations regarding AA-MAS were not finalized. During the development of the AA-MAS regulations, ED offered "2% interim policy options." When ED regulations regarding AA-MAS were finalized and released on April 9, 2007, they included a transition provision regarding modified achievement standards, which provided that states could (with approval from the Secretary) continue to use the 2% interim policy options through school year 2008-2009.[49] Since the 2% interim policy options expired and states are now required to adopt the finalized ED regulations regarding AA-MAS, implementation results of this transitional provision will not be discussed.[50]

Development and Implementation of AA-AAS

In school year 2005-2006, all 50 states, the District of Columbia, and Puerto Rico had alternate assessments in reading and mathematics.[51] To comply with ED regulations regarding the development of new alternate achievement standards, states could keep their existing alternate assessment if they believed it to be consistent with regulations, develop a new alternate assessment, or modify an existing alternate assessment. In 2006-2007, 9 states reported keeping an existing alternate assessment, 18 states reported developing a new alternate assessment, and 15

[47] U.S. Department of Education, "Title I – Improving the Academic Achievement of the Disadvantaged; Final Rule," 68700, December 9, 2003; Note that these regulations address the development and use of AA-AAS in state accountability systems; however, regulations regarding the development and use of AA-MAS were not released until April 19, 2007.

[48] Amy Elledge, Kerstin Carlson Le Floch, and James Taylor, et al., *State and Local Implementation of the No Child Left Behind Act*, Office of Planning, Evaluation, and Policy Development; U.S. Department of Education, Volume V – Implementation of the 1 Percent Rule and 2 Percent Interim Policy Options, Washington, DC, January 2009, http://www.ed.gov/rschstat/eval/disadv/nclb-disab/nclb-disab.pdf.

[49] 34 C.F.R. §200.20(g).

[50] For more information on implementation of the "2% interim policy options," see Amy Elledge, Kerstin Carlson Le Floch, and James Taylor, et al., *State and Local Implementation of the No Child Left Behind Act*, Office of Planning, Evaluation, and Policy Development; U.S. Department of Education, Volume V – Implementation of the 1 Percent Rule and 2 Percent Interim Policy Options, Washington, DC, January 2009, pp. 29-34, http://www.ed.gov/rschstat/eval/disadv/nclb-disab/nclb-disab.pdf.

[51] Three states had not yet developed alternate assessments for all grades assessed for AYP purposes (i.e., grades 3-8 and once in high school).

states reported modifying an existing alternate assessment.[52] By August 2008, most states had received approval from ED on their AA-AAS within their state assessment and accountability plans. Fifteen states, however, did not receive approval. Of those not receiving approval, states typically had difficulty with the alignment (linkage) of content standards with alternate assessments, the technical quality of the alternate assessments (e.g., reliability, validity), and the documentation of a validated standards-setting process.

By April 2007, 50 states provided participation guidelines for IEP teams to use in determining which students were eligible to take AA-AAS. Forty-two of the 50 states used a "checklist" or "worksheet" method that allowed IEP teams to provide evidence that a particular student with a disability was eligible to participate in AA-AAS. All states required documented evidence that the student had a significant cognitive disability and received an extensively modified curriculum during instruction. States defined "most significant cognitive disability" using criteria that describe a student's intellectual and adaptive functioning. The most common criteria used to define "most significant cognitive disability" included (1) significantly subaverage intellectual functioning or cognitive ability (40 states), (2) deficits in adaptive behavior (35 states), (3) cognitive and adaptive deficits that adversely affect academic performance (19 states), and (4) cognitive and adaptive deficits that manifest before the age of 18 (23 states).

Thirty-one states also required IEP teams to use exclusionary criteria to determine eligibility for AA-AAS. Exclusionary criteria are criteria that may not be considered in determining eligibility for participation in alternate assessments. For example, in many states participation in AA-AAS may not be due to the student's specific disability category (e.g., autism, mental retardation); excessive absences; social, cultural, or economic differences; or expectations of poor performance on the general state assessment.

In school year 2005-2006, 49 states, the District of Columbia, and Puerto Rico used scores from AA-AAS to calculate AYP. Twenty-two states reported granting exceptions to the 1% cap to LEAs. Twenty-six states, the District of Columbia, and Puerto Rico did not grant exceptions to LEAs, in most cases because no LEAs requested exceptions.[53] The number of exceptions granted to LEAs by states varied from approximately 2 exceptions to approximately 100 exceptions. Of the 22 states that reported granting exceptions, the 1% cap was typically exceeded by a small amount. LEAs that exceeded the 1% cap by a larger amount tended to have low student enrollments in which just a few students participating in AA-AAS would exceed the cap.

The SSI-NCLB report did not collect data on the number of states that were required to redistribute scores that exceeded the cap or the methods of redistributing scores used by states. It appears, however, that some states have tested much higher proportions of their students with disabilities with AA-AAS than would be envisioned under ED policies. In general, ED estimated that the 1% cap translates into approximately 9% of students with disabilities, and several states reported assessing much more than 9% of students with disabilities using AA-AAS. In several isolated cases, the number of students with disabilities participating in AA-AAS exceeded 30% of all students with disabilities.[54] In addition, for school year 2005-2006, 10 states reported

[52] 42 states reported data.

[53] One state survey respondent was unsure if any exceptions to the 1% cap were granted to LEAs.

[54] See Exhibit C.4 of Amy Elledge, Kerstin Carlson Le Floch, and James Taylor, et al., *State and Local Implementation of the No Child Left Behind Act*, Office of Planning, Evaluation, and Policy Development; U.S. Department of Education, Volume V – Implementation of the 1 Percent Rule and 2 Percent Interim Policy Options, Washington, DC, January 2009, p. 85, http://www.ed.gov/rschstat/eval/disadv/nclb-disab/nclb-disab.pdf.

problematic data that did not clearly describe the percentage of students with disabilities who participated in AA-AAS.[55]

Development and Implementation of AA-MAS

There are fewer data available that describe the development and implementation of AA-MAS. ED released final regulations in April 2007. Over the next two years, states adapted their assessment and accountability systems to be consistent with the regulations. As of January 2009, ED reported that eight states[56] administered AA-MAS in school year 2007-2008 and an additional 20 states were in the process of developing AA-MAS.[57]

The National Center on Educational Outcomes (NCEO) conducted a survey of states that have implemented AA-MAS.[58] The survey reports that nine states have publicly available participation guidelines for IEP teams to determine eligibility for AA-MAS. All nine states have written descriptive criteria for eligibility. In addition, some have flow charts or decision trees (four states) and checklists (three states). Eligibility criteria varied across states. The most common criteria included (1) student has an IEP (nine states), (2) student is learning grade-level content (seven states), and (3) decisions about the student are based on multiple measures of performance (seven states). Some states used exclusionary criteria as well. Again, exclusionary criteria are criteria that may not be considered to determine eligibility for participation in alternate assessments. For example, some states required that eligibility for AA-MAS not be dependent on (1) the student's disability category (e.g., learning disability, mental retardation) (six states), (2) excessive absences, social, cultural, language, economic, or environmental factors (four states), or (3) educational placement (three states).

Student participation rates within the states that implement AA-MAS are not readily available. Thus, at this time it is not possible to determine whether states are appropriately testing students with disabilities using AA-MAS, whether states are exceeding the 2% cap, and how states are redistributing scores, if necessary.

Challenges in Development and Implementation of Alternate Assessments

The following sections describe several challenges states have encountered in the development and implementation of alternate assessments. Although all states now have approved assessment

[55] States varied in the way they calculated participation rates of students with disabilities who were tested using AA-AAS. For more information, see S.J. Thompson, C.J. Johnstone, and M.L. Thurlow, et al., *2005 State Special Education Outcomes: Steps Forward in a Decade of Change*, National Center on Educational Outcomes, Minneapolis, MN, 2005, http://cehd.umn.edu/nceo/OnlinePubs/2005StateReport.pdf.

[56] Another source reports that, as of December 2008, nine states had developed AA-MAS (see Sheryl S. Lazarus, Christopher Rogers, and Damien Cormier, et al., *States' Participation Guidelines for Alternate Assessments Based on Modified Academic Achievement Standards (AA-MAS) in 2008*, National Center on Educational Outcomes (NCEO), Synthesis Report 71, Minneapolis, MN, December 2008, http://cehd.umn.edu/nceo/OnlinePubs/Synthesis71/Synthesis71.pdf.

[57] See State Status Chart at http://www.ed.gov/policy/elsec/guid/stateletters/ssc.xls.

[58] See footnote 55.

systems that incorporate AA-AAS and nearly all use results from these assessments in their accountability systems, most states are still in the development process of incorporating AA-MAS. One difficulty that states faced in the development and implementation of alternate assessments was the limited statutory language provided in NCLB. The limited statutory language may have delayed states in the development of alternate assessments as they awaited regulations from ED. Another challenge in developing alternate assessments was developing alternate assessments that met professional standards for technical adequacy, including validity and reliability. The lack of technical adequacy evidence delayed ED's approval of some state assessment systems, which further delayed the implementation of alternate assessments.

Limited Statutory Language and Timing of Regulations

NCLB does not include statutory language regarding alternate assessments. Section 1111 of NCLB outlines the requirements for state assessments, in general, which include the provision that state assessments must measure the achievement of all children. The statute allows for "reasonable adaptations and accommodations" for students with disabilities, however, the language maintained that students with disabilities must be tested relative to state academic content standards and achievement standards.[59] The use of adaptations and accommodations are not synonymous with the development and use of alternate assessments based on grade-level expectations, AA-AAS, or AA-MAS.[60]

NCLB was enacted in January 2002. Section 1908 of NCLB required the Secretary to issue regulations for Section 1111 "not later than 6 months after the date of enactment." ED regulations were subsequently released on July 5, 2002.[61] These regulations specify, for the first time, that states' assessment systems under NCLB must include at least one alternate assessment for students with disabilities. Alternate assessments were required to yield results in at least reading/language arts, and, beginning in the 2007-2008 school year, science. The regulations issued in July 2002 did not include language that allowed states to develop alternate or modified achievement standards, nor did they specify how results from alternate assessments could be used in state accountability systems.

Approximately a year and a half later, ED issued the December 9, 2003, regulations regarding the development and use of AA-AAS in state accountability systems (approximately two years after the enactment of NCLB). These regulations were the first to mention the development of alternate achievement standards, which allowed states, for the first time, to set different levels of expectations for students with the "most significant cognitive disabilities." The December 2003 regulations were also the first set of regulations to describe the 1% cap in counting proficient and advanced scores for AYP purposes.

[59] ESEA, §1111(a)(3)(C)(ix)(II).

[60] Adaptations and accommodations are generally thought of as changes in testing materials and procedures, however, the test content and questions remain the same. Examples of adaptations and accommodations include changes in the presentation of a test (e.g., repeating directions, providing directions in Braille), changes in the response to test items (e.g., using a scribe), changes in setting (e.g., study carrel, separate room), use of additional equipment (e.g., calculator, amplification device, manipulatives), and use of flexible timing and scheduling (e.g., extended time, frequent breaks).

[61] U.S. Department of Education, "Title I – Improving the Academic Achievement of the Disadvantaged; Final Rule," 67 *Federal Register* 129, July 5, 2002.

Approximately three and a half years later, ED issued the April 19, 2007, regulations regarding the development and use of AA-MAS in state accountability systems (more than five years after the enactment of NCLB). These regulations were the first to mention the development of modified achievement standards for students with disabilities, and the first to describe the 2% cap in counting proficient and advanced scores for AYP purposes.

The timeline above describes a period of more than five years in which states were gradually given information on how to develop and use alternate assessments for students with disabilities in their accountability systems. During that period, states developed their own policies regarding the use of alternate assessments in accountability systems, which occasionally became inconsistent with subsequent ED regulations. When final ED regulations were released, states that had adopted policies inconsistent with regulations often had to redevelop alternate assessments, redevelop achievement standards, change their general testing practices, and resubmit their state assessment plans to ED for approval.

Technical Adequacy of Assessments

Alternate assessments are subject to the same technical adequacy requirements as all general state assessments under Section 1111 of NCLB. That is, alternate assessments must "be used for purposes for which such assessments are valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards."[62] While there are, arguably, "recognized professional and technical standards" for standardized assessments of the general population,[63] there are no "recognized professional and technical standards" for individualized, alternate assessments of students with disabilities. There are types of validity and reliability evidence that are often relevant to alternate assessments, but the type of evidence needed to establish validity and reliability may need to be made on a case-by-case basis. Because alternate assessments take various forms, such as portfolios, checklists, teacher observations, and performance assessments, traditional evidence of validity and reliability may be inappropriate. The general state assessment is usually a standardized test that uses a combination of multiple-choice and constructed-response (e.g., short answer, essay) formats. Collecting validity and reliability evidence for a standardized test using multiple-choice and constructed-response formats is a well-established practice in the field of educational assessment. Collecting this evidence for individualized alternate assessments, however, is not well established.

In 2001, a research collaborative was convened to examine key issues in developing technically defensible alternate assessments for use in state accountability systems. The collaborative included experts in special education, curriculum, and measurement. This collaborative created a model framework that could be used to study the validity of alternate assessments.[64] By early 2008, 10 states had partnered with the collaborative to apply the model framework to their own alternate assessments. It is unclear at this time, however, whether the model framework is increasing approval rates of states' alternate assessments undergoing peer review.

[62] ESEA, §1111(a)(3)(C)(iii).

[63] For example, see AERA, APA, NCME, "Standards for Educational and Psychological Testing," (Washington, DC: American Psychological Association, 1999).

[64] Rachel Quenemoen, *A Brief History of Alternate Assessments Based on Alternate Achievement Standards*, National Center on Educational Outcomes, Synthesis Report 68, Minneapolis, MN, September 2008, p. 17, http://cehd.umn.edu/nceo/OnlinePubs/Synthesis68/Synthesis68.pdf.

During ED's peer review process for state assessment systems, the most common problems cited by reviewers were (1) insufficient evidence to show how alternate assessments were linked to grade-level content standards, and (2) inadequate evidence of the validity and reliability of the alternate assessments. In addition, some states had not adequately documented how the alternate assessment standards were adopted by the state, how the alternate achievement standards were set by the state, and how the results of the alternate assessments would be reported.[65]

Analysis of Recommendations for ESEA Reauthorization: Students with Disabilities

As this report has discussed, the inclusion of students with disabilities in state assessment and accountability systems is a relatively new practice. NCLB was the first federal law that held schools accountable for the academic achievement of students with disabilities, and the methods used to include these students have been evolving since its enactment. The reauthorization of ESEA may revisit issues related to the assessment of students with disabilities and the ways in which schools are held accountable for their academic achievement.

The Education Commission of the States (ECS) collected and synthesized recommendations for NCLB/ESEA reauthorization from 15 national education organizations. ECS manages a database of these recommendations around 16 issue areas, one of which is "students with disabilities." Of the 15 surveyed organizations, 13 provided recommendations on the assessment of students with disabilities.[66] Some organizations advocated improving current practice, such as improving alternate assessments, maintaining the current 1% and 2% regulations, and increasing funding for the development of assessments for students with disabilities. Other organizations, however, proposed more substantial changes to current practice, such as reconsidering the 1% and 2% caps, increasing the role of IEPs in assessment and accountability systems, increasing the use of growth models for students with disabilities, and providing other policy flexibility in AYP determinations. An analysis of these proposed changes to current practice is provided in the following sections.

Reconsidering the 1% and 2% Caps

One possible issue for the reauthorization of NCLB may be the reconsideration of the 1% and 2% caps. As previously discussed, Congress did not originally include any statutory language on the use of alternate assessments in state accountability systems under NCLB. Congress may choose to revisit the issue and include statutory language that either increases or decreases the 1% and 2% caps.[67] Increasing or decreasing the caps would have implications for the manner in which schools and LEAs are held accountable for the achievement of students with disabilities.

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[65] Amy Elledge, Kerstin Carlson Le Floch, and James Taylor, et al., *State and Local Implementation of the No Child Left Behind Act*, Office of Planning, Evaluation, and Policy Development; U.S. Department of Education, Volume V – Implementation of the 1 Percent Rule and 2 Percent Interim Policy Options, Washington, DC, January 2009.

[66] For the full text of ECS's "Students with Disabilities (SWD) Summary of Recommendations NLCB Reauthorization" see http://nclbmb.ecs.org/reports/Report.aspx?id=1572.

[67] As previously discussed, in August 2013, ED published proposed regulations to end the use of AA-MAS. (To read the proposed regulations, see https://www.federalregister.gov/articles/2013/08/23/2013-20665/title-i-improving-the-academic-achievement-of-the-disadvantaged.) In addition, 42 states, the District of Columbia, and Puerto Rico have (continued...)

One commission recommended maintaining the 1% cap but decreasing the 2% cap to 1%.[68] Under this proposal, the number of proficient and advanced scores based on AA-AAS may not exceed 1% of all students assessed, and the number of proficient and advanced scores based on AA-MAS may not exceed 1% of all students assessed. Decreasing the 2% cap would reduce the amount of flexibility that states currently have in assessing students with disabilities and in determining how scores are included in the accountability system. In general, decreasing the 1% and 2% caps may further discourage states and IEP teams from inappropriately identifying students with disabilities and recommending their participation in alternate assessments. In addition, decreasing the caps may send a strong signal to educators that students with disabilities should have access to the general education curriculum and be measured against challenging academic standards.

Alternatively, Congress may choose to increase the caps, providing more flexibility to states in the assessment of students with disabilities. Increasing the 1% and 2% caps may protect schools and LEAs from failing to meet AYP due solely to the students with disabilities subgroup. It may also provide educators more flexibility in determining appropriate academic goals for students with disabilities, instead of being required to teach either extended or grade-level content standards of the state. Increasing the caps, however, may incentivize states and IEP teams to inappropriately identify students with disabilities and to recommend their participation in alternate assessments. It may also result in the exclusion of some students with disabilities from participation in the general education curriculum, which may deny them equal access to instruction and equal opportunity to achieve challenging academic standards.

ED has indicated that the current Administration is interested in maintaining the use of AA-AAS for students with the most significant cognitive disabilities; however, it does not support the continuation of AA-MAS for other students with disabilities.[69] In August 2013, ED proposed regulations to transition away from the use of AA-MAS and toward "college and career ready standards and general assessments that are aligned to those standards and accessible to all students."[70]

(...continued)

had their applications for the ESEA flexibility package approved. No later than the 2014-2015 school year, states operating under the ESEA flexibility package must include students who are currently eligible to take alternate assessments based on modified academic achievement standards in their assessments based on grade-level academic achievement standards. Thus, 42 states, the District of Columbia, and Puerto Rico will no longer be able to administer alternate assessments based on modified academic achievement standards as of the 2014-2015 school year, regardless of when or if ED enacts the aforementioned proposed regulations. (For more information, see U.S. Department of Education, ESEA Flexibility: Frequently Asked Questions, item C-15, available online at http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html.)

[68] Commission on No Child Left Behind, *Ensuring Students with Disabilities Achieve Academic Success*, http://www.aspeninstitute.org/sites/default/files/content/docs/commission%20on%20no%20child%20left%20behind/DisabilitiesBackgrounderFINAL5.8.07.pdf.

[69] Statements made about AA-AAS and AA-MAS are based on information provided by the U.S. Department of Education at a meeting with staff from the House of Representatives on March 25, 2010.

[70] United States Department of Education, "Department of Education Proposes to Eliminate "2 Percent Rule" in Assessing Students with Disabilities," press release, August 23, 2013, http://www.ed.gov/news/press-releases/department-education-proposes-eliminate-2-percent-rule-assessing-students-disabi.

Role of IEPs

Several education organizations have proposed increasing the role of IEPs in state assessment and accountability systems. IDEA requires that each student with a disability be provided an IEP that outlines the provision of special education and related services. An IEP is a written document that provides descriptions of the student's current level of functioning, measurable annual goals, and methods for measuring the student's progress toward those goals.[71] Organizations that advocate increasing the role of IEPs propose using these annual goals and methods for measuring student progress in assessment and accountability systems. There is some disagreement, however, over the appropriate amount of independence and flexibility that should be granted to states and IEP teams for the development of annual goals, measurement of academic achievement, and determination of AYP.

At one end of the spectrum, states could be granted a considerable amount of flexibility to direct IEP teams to determine curricula, standards, and assessments for students with disabilities. Several organizations proposed allowing states to count students with disabilities as meeting AYP if they successfully completed their IEP goals.[72] Other organizations proposed allowing states to independently determine the percentage of students with disabilities that should participate in alternate assessments or "out-of-level" assessments based on the student's IEP.[73] In this scenario, states could use separate starting points for AYP projections based on each individual student's present level of achievement, as outlined in the IEP. These methods would provide states and IEP teams the flexibility necessary to develop truly individualized education plans for students with disabilities and allow the curriculum, standards, and assessments to be adapted to suit the needs of the student. On the other hand, the focus on meeting IEP goals for AYP may inadvertently lead to setting lower goals for students with disabilities, thereby lowering overall expectations of achievement for students with disabilities. Such an outcome would be inconsistent with the original intent of including students with disabilities in state assessment and accountability systems—increasing access to the general education curriculum, and, in turn, increasing expectations and achievement of students with disabilities.

At the other end of the spectrum, states may be granted some flexibility to direct IEP teams to choose specific curricula and assessments, however, the standards would be determined by the state. In this scenario, states could require the use of a "standards-based IEP" document, which would require IEP teams to write annual goals that are linked to the state's academic content standards. Traditionally, a student's IEP has been considered a highly individualized document that is not necessarily linked to the state's academic content standards. "Traditional" IEP goals tend to focus on developmental goals, such as "school readiness" and functional skills. As the emphasis on academic achievement of students with disabilities increased during the 1990s, the focus of many IEP goals shifted from "traditional" developmental goals to academic goals.

Including academic goals on IEPs allows IEP teams to link the goals for students with disabilities to the state academic content standards in a way that was not possible with developmental goals.

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[71] An IEP must include additional elements that are not discussed in this report. For a full description of the requirements of an IEP, see IDEA §614(d).

[72] NGA, CCSSO, and NASBE, *Joint Statement on the Reauthorization of the No Child Left Behind Act (NCLB)*, http://www.nga.org/Files/pdf/0704NCLBSTATEMENT.PDF.

[73] NCSL and AASA, Joint Statement of the National Conference of State Legislatures and the American Association of School Administrators on ESEA Reauthorization, http://ecom.ncsl.org/statefed/nclb/NCSLAASAJointStatement.htm.

A "standards-based IEP," therefore, is a document in which students with disabilities have annual goals that are aligned with, or linked to, the state's grade-level academic content standards.[74] If students were assessed against standards-based IEP goals, they would, in essence, be assessed against state academic content standards. Requiring standards-based IEPs would provide an academic focus and structure for states and IEP teams to use when determining appropriate goals for students with disabilities. It would also allow some flexibility in the curricula chosen to teach these standards and the assessments used to measure the attainment of the standards. On the other hand, standards-based IEPs may not allow IEP teams enough flexibility to truly individualize goals and instruction, especially for students with significant cognitive disabilities. IEP teams may want to preserve some of the more traditional developmental goals for students with significant cognitive disabilities, and IEP teams may find it difficult to extend the state content standards in a meaningful way for these students.

In general, increasing the role of the IEP in assessment and accountability systems may reduce the redundancy in setting multiple sets of goals and objectives for students with disabilities. It may also simplify the reporting of the academic progress of students with disabilities by combining reporting requirements contained within IDEA and NCLB. Nevertheless, the variability in procedures used to set IEP goals and objectives may reduce their usefulness in accountability systems. IEP goals vary greatly in their rigor, level of challenge to the student, and relationship to the state content standards. Using IEP goals to determine AYP may also result in a diminished capacity to compare the achievement of students across schools, districts, and states, which may mask the overall achievement (or lack of achievement) of students with disabilities.

Growth Models[75]

A number of education organizations have proposed expanding the use of growth models in AYP determinations for students with disabilities.[76] Several organizations have proposed that AYP should reflect the academic "progress" of students with disabilities, independent of any ultimate goal (i.e., 100% proficiency by school year 2013-2014). Similarly, other organizations have proposed the use of individual student growth models that follow the progress of the same students over time at all performance levels. Such models would reward schools for improving the achievement of all students with disabilities, even those performing substantially below the proficient level.[77]

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[74] For more information on standards-based IEPs, see Eileen Ahearn, *Standards-Based IEPs: Implementation in Selected States*, National Association of State Directors of Special Education, May 2006, http://www.projectforum.org/docs/Standards-BasedIEPs-ImplementationinSelectedStates.pdf.

[75] A complete discussion of growth models is beyond the scope of this report. For a more thorough discussion of growth models, see CRS Report RL33032, *Adequate Yearly Progress (AYP): Growth Models Under the No Child Left Behind Act*.

[76] See, for example, NGA, CCSSO, and NASBE, *Joint Statement on the Reauthorization of the No Child Left Behind Act (NCLB)*, http://www.nga.org/Files/pdf/0704NCLBSTATEMENT.PDF; NASSP, NASSP No Child Left Behind Legislative Recommendations, http://www.principals.org/s_nassp/bin.asp?CID=969&DID=52898&DOC=FILE.PDF; and Commission on No Child Left Behind, *Ensuring Students with Disabilities Achieve Academic Success*, http://www.aspeninstitute.org/sites/default/files/content/docs/commission%20on%20no%20child%20left%20behind/DisabilitiesBackgrounderFINAL5.8.07.pdf.

[77] States operating under the ESEA flexibility package are required to take into account student growth in their differentiated accountability systems. ED has indicated that it would only approve growth models that include "aggressive growth targets that would result in all students, including students with disabilities and English Learners, meeting the State's college- and career-ready standards within a specified number of years." More specifically, ED (continued...)

In November 2005, the Secretary announced a growth model program in which states could use growth models to make AYP determinations. In 2009, 15 states participated in the growth model pilot program. Requirements for the growth models in the pilot program were relatively restrictive. In order to be considered for the pilot program, the growth models proposed by states had to meet the following seven criteria:

1. Ensure that all students are proficient by 2013-2014 and set annual goals to ensure that the achievement gap is closing for all groups of students;
2. Establish high expectations for low-achieving students, while not setting expectations for annual achievement based upon student demographic characteristics or school characteristics;
3. Produce separate accountability decisions about student achievement in reading/language arts and in mathematics;
4. Ensure that all students in the tested grades are included in the assessment and accountability system, hold schools and districts accountable for the performance of each student subgroup, and include all schools and districts;
5. Be based on assessments in each of grades 3-8 and high school in both reading/language arts and mathematics that have been operational for more than one year, received approval through the NCLB peer review process for the 2005-06 school year, and produce comparable results from grade to grade and year to year;
6. Track student progress as part of the state data system; and
7. Include student participation rates in the state's assessment system and student achievement on an additional academic indicator.

If these requirements are upheld in future growth model programs, it is unclear if the growth models would be flexible enough to credit states for improving the achievement of students with disabilities. Under the requirements of this program, it was not necessarily the case that schools and LEAs would meet AYP by improving the achievement of students with disabilities, even if the improvement was substantial. For example, if the ultimate goal of 100% proficiency by 2013-2014 was maintained (criterion 1), in many cases students with disabilities would have to make unreasonably large gains in achievement each year to make AYP. Relatively significant gains in achievement may still result in failure to meet AYP goals for the school and LEA.

In addition, some of the criteria above may be inconsistent with the use of alternate assessments in growth models, especially for students with the "most significant cognitive disabilities" who participate in AA-AAS. For example, if the assessment system must "be based on assessments in each of grades 3-8" and "produce comparable results from grade-to-grade and year-to-year" (criterion 5), it is unclear how some AA-AAS fulfill this requirement. General state assessments

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anticipates approving models that require students to meet state standards within four years or by high school graduation, whichever comes first. In addition, ED does not anticipate approving models that take into account student background characteristics. (U.S. Department of Education, ESEA Flexibility: Frequently Asked Questions, item C-13, available online at http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html; and CRS Report R42328, *Educational Accountability and Secretarial Waiver Authority Under Section 9401 of the Elementary and Secondary Education Act*, by (name redacted) and (name redacted).)

would reflect a progression of skills and competencies from grades 3-8 that would represent what annual growth means for students without disabilities. Regulations outlining the development and use of AA-AAS, however, allow states to incorporate "out of level" testing for students with the "most significant cognitive disabilities" and use alternate achievement standards for grade clusters (e.g., 3-5, 6-9, 10-12). It is unclear how an "out of level" AA-AAS for a three to five grade cluster produces "comparable results from grade-to-grade and year-to-year." Using out of level tests and grade clusters make it more difficult to define what represents annual growth. The annual growth of students participating in AA-AAS, therefore, may not be adequately captured by this type of growth model.[78]

Other Policy Flexibility in AYP Determinations

Increasing the role of IEPs and the use of growth models are regularly mentioned as possible issues to consider when assessing students with disabilities for AYP purposes. Other policy flexibility in making AYP determinations, however, has been offered at a more general level. Rather than focus on methods for assessing students with disabilities, these other options tend to focus on how the scores of students with disabilities should count in AYP determinations.

For example, one option may be to allow extended time for students to be included in the "students with disabilities" AYP subgroup. That is, if a student is no longer eligible for special education because he or she has made academic improvements, the scores from state assessments for that student could still be counted in the "students with disabilities" AYP subgroup. Currently, regulations allow a student who was previously identified as having a disability but no longer receives special education services to be counted in the "students with disabilities" AYP subgroup for an additional two years.[79] Some proposals may favor including these students in the "students with disabilities" AYP subgroup for a longer period of time because it may increase the likelihood that the subgroup makes AYP. Allowing "declassified" students[80] to count in the "students with disabilities" AYP subgroup could be viewed as giving more credit to a school's effort to educate students with disabilities successfully so that they no longer require special education services. This provision may incentivize schools to move students in and out of special education based on academic performance, without concern over losing a "high-achieving special education student" from the "students with disabilities" AYP subgroup.

Another option may be to maintain the "safe harbor" provision of NCLB. The safe harbor provision allows schools or LEAs that fail to meet the usual AYP requirements to be deemed to have made AYP if (1) among the subgroups not meeting AYP, the percentage of students who are

[78] It is possible in some cases, however, to include scores from AA-AAS in a growth model that meets the criteria above. At least one state has a growth model that incorporates scores from students with the most significant cognitive disabilities who participate in alternate assessments.

[79] 34 C.F.R. §200.20(f)(2)(i)(B).

[80] A "declassified" student is a student who was once identified with a disability and received special education services but no longer requires such services. The Office of Special Education Program's Annual Report to Congress provides information on the percentage of students ages 6-12 who received special education services in 2000 but were declassified by 2002. The percentage of declassification ranged from 2% (traumatic brain injury, autism) to 34% (speech or language impairments). On average, 17% of students with disabilities were declassified from 2000 to 2002. For more information on declassification, see U.S. Department of Education, *28th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2006*, Volume 1, January 2009, pp. 71-74, http://www.ed.gov/about/reports/annual/osep/2006/parts-b-c/28th-vol-1.pdf.

not at the proficient or higher level in the school declines by at least 10%,[81] and (2) among the subgroups not meeting AYP, the students make progress on at least one other academic indicator included in the state's AYP standards.[82] If students with disabilities, as a subgroup, fail to meet AYP goals, the school or LEA may still be deemed to have made AYP if the above conditions are met.[83] This provision provides flexibility to schools and LEAs by providing a secondary route to meeting AYP. It does not, however, focus attention and resources on developing appropriate assessments for students with disabilities or attaining higher levels of achievement for students with disabilities.

ESEA Reauthorization Activity in the 113th Congress

During the 113th Congress, both the House and the Senate have considered legislation to reauthorize the ESEA.[84] On June 12, 2013, the Senate Health, Education, Labor, and Pensions (HELP) Committee considered and ordered reported the Strengthening America's Schools Act (S. 1094) by a strictly partisan vote of 12-10. The House Education and Workforce Committee also considered and ordered reported a bill that would reauthorize the ESEA. On June 19, 2013, on a strictly partisan vote of 23-16, the Success for All Students Act (H.R. 5) was ordered reported. H.R. 5 was subsequently considered and amended on the House floor. The amended version of H.R. 5 was passed on July 19, 2013, by a vote of 221-207. It is unclear whether S. 1094 will be considered on the Senate floor. Subsequent references to S. 1094 and H.R. 5 in this report refer to S. 1094 as ordered reported by the HELP Committee and H.R. 5 as passed by the House.

Both S. 1094 and H.R. 5 would make changes to Title I-A accountability requirements that would affect assessments for students with disabilities. S. 1094 would authorize (but not require) the development of alternate assessments aligned with alternate academic standards for students with the most significant cognitive disabilities. It would limit the use of alternative assessments in state accountability systems by continuing to limit the percentage of scores used within the accountability system to 1% of all students. However, S. 1094 would not authorize the development or use of alternate assessments aligned with modified achievement standards for other students with disabilities. Further, it would explicitly prohibit the development or implementation of any modified achievement standard.

[81] In practice, the 10% threshold is difficult to meet and some have recommended reducing this to 3%-4%. See, for example, Robert L. Linn, *Issues in the Design of Accountability Systems*, National Center for Research on Evaluation, Standards, and Student Testing, CSE Technical Report 650, Los Angeles, CA, April 2005, http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/1b/b4/91.pdf.

[82] Under NCLB, state AYP systems must include at least one indicator, other than achievement test scores. For senior high schools, the additional indicator must be the graduation rate. A typical additional indicator for elementary and middle schools is the attendance rate; For more information on "safe harbor," see CRS Report RL33032, *Adequate Yearly Progress (AYP): Growth Models Under the No Child Left Behind Act*.

[83] In 28 states with available data in 2004-2005, 35% of schools missed AYP for the "students with disabilities" subgroup and 8% of schools missed AYP solely for the "students with disabilities" subgroup. See Amy Elledge, Kerstin Carlson Le Floch, and James Taylor, et al., *State and Local Implementation of the No Child Left Behind Act*, Office of Planning, Evaluation, and Policy Development; U.S. Department of Education, Volume V – Implementation of the 1 Percent Rule and 2 Percent Interim Policy Options, Washington, DC, January 2009, http://www.ed.gov/rschstat/eval/disadv/nclb-disab/nclb-disab.pdf.

[84] For more information about ESEA reauthorization proposals in the 113th Congress, see CRS Report R43146, *ESEA Reauthorization Proposals in the 113th Congress: Comparison of Major Features*, by (name redacted) et al.

H.R. 5 would also authorize (but not require) the development of alternate assessments aligned with alternate academic standards for students with the most significant cognitive disabilities. However, H.R. 5 would not limit the use of alternate assessments in the accountability system. In addition, H.R. 5 would not explicitly authorize or prohibit the development or use of alternate assessments aligned with modified achievement standards for other students with disabilities.

Appendix A. Characteristics of Alternate Assessments

Table A-1. Characteristics of Alternate Assessments

Similarities and Differences between AA-AAS and AA-MAS

	AA-AAS (1%)	AA-MAS (2%)
Achievement Standard	An alternate achievement standard is an expectation of performance that differs in complexity from a grade-level achievement standard, usually based on a very limited sample of content that is linked to, but does not fully represent, grade-level content. May be defined for grade clusters (e.g., 3-5, 6-8, 10-12).	A modified achievement standard is aligned to grade-level content standards for the grade in which a student is enrolled and challenging for eligible students, but may be less difficult than grade-level achievement standards. Achievement standards must include three levels of performance, cut scores that distinguish one level from another, and descriptors of the content-based competencies associated with each level. May not be defined for grade clusters. Must be defined grade-by-grade.
Setting Standards	Requires a "documented and validated standards setting process." A detailed description of the procedures used, the qualifications of panelists (which must include persons knowledgeable about the state's content standards and experienced in standards setting, and special educators who are most knowledgeable about students with disabilities), the final cut scores, and performance level descriptors must be submitted for peer review.	Requires a "documented and validated standards setting process." A detailed description of the procedures used, the qualifications of panelists (which must include persons knowledgeable about the state's content standards and experienced in standards setting, and special educators who are most knowledgeable about students with disabilities), the final cut scores, and performance level descriptors must be submitted for peer review.
Content Standards on which the Test is Based	"Extended" standards may include substantially simplified content, including pre-requisite skills.	Grade-level
Assessment	May include reduced coverage and/or simplification of grade-level content, based on "extended" standards. Format may permit variation in test content for individual students if results can be aggregated.	Built on grade-level content but with easier items.
Cap	State and LEA	State and LEA
Out-of-Level Assessments	Permitted only if consistent with the regulation (i.e., documented and validated standards-setting process employed).	Not permitted because out-of-level assessments do not assess grade-level content.
IEP	Must include annual measurable IEP goals and benchmarks or short-term objectives.	Must include annual measurable IEP goals that are based on grade-level content standards.

	AA-AAS (1%)	AA-MAS (2%)
State Guidelines Define Who is Eligible	Students with the most significant cognitive disabilities. IEP team makes the decision regarding the appropriate assessment.	Student whose disability has precluded him or her from achieving proficiency, as demonstrated by objective evidence of the student's performance, and whose progress is such that, even if significant growth occurs, the student's IEP team is reasonably certain that he or she will not achieve grade-level proficiency within the year covered by the IEP. IEP team makes the decision regarding the appropriate assessment.

Source: U.S. Department of Education, *Modified Academic Achievement Standards*, Non-Regulatory Guidance, July 2007, pp. 52-53, http://www.ed.gov/policy/speced/guid/nclb/twopercent.doc.

Appendix B. Methods of Redistributing Scores

Table B-1. Methods for Distributing Scores Exceeding Caps

Model	Pros	Cons
Random Assignment	Should be impartial and fair over time. Easy to computerize. Easy to understand/communicate.	Seldom regarded as fair when distribution is uneven in a particular year. Might be hard to implement in small districts.
Proportional	Might deter inappropriate assignment of students to alternate achievement standards and modified achievement standards.	Might penalize a school that has a large number of students with significant cognitive disabilities appropriately tested using alternate achievement standards. Might penalize a school that has a large number of students with disabilities appropriately tested using modified achievement standards.
Strategic	Might be perceived as providing the maximum benefit for schools.	Difficult to implement. Can be perceived as unethical or as using favoritism. Consistency might be hard to maintain over time. Assumes "correct" students assessed.
Predetermined School Cap	Might be effective in LEAs with stable populations and special education services when alternate achievement standards and modified achievement standards have been applied conservatively.	Small population changes may result in an imbalance among schools. May perpetuate historical problems.

Source: Tiffany Martinez and Ken Olsen, *Distribution of Proficient Scores that Exceed the 1% Cap: Four Possible Approaches*, Mid-South Regional Resource Center, March 2004, ERIC# ED484423 at http://www.eric.ed.gov/.

Note: This table has been slightly modified from its original form to incorporate redistributing scores based on alternate achievement standards *and* modified achievement standards.

Appendix C. Redistributing Scores Example

Table C-1. Examples Showing the Percentage of Proficient and Advanced Scores to be Redistributed in a State that Implements Both Modified and Alternate Academic Achievement Standards

	AA-AAS (1%)	AA-MAS (2%)	Proficient and Advanced Scores that Must be Redistributed as Non-Proficient Scores
LEA A Exceeds the 2% Cap	0.9%	2.6%	0.5%
LEA B Exceeds the 2% Cap	0.7%	2.3%	0%
LEA C Exceeds the 1% Cap	1.4%	1.5%	0.4%
LEA D Exceeds both the 1% and 2% Caps	1.3%	2.6%	0.9% (0.3% from AA-AAS)

Source: The example is reproduced from U.S. Department of Education , *Modified Academic Achievement Standards*, Non-Regulatory Guidance, July 2007, pp. 46-47, http://www.ed.gov/policy/speced/guid/nclb/twopercent.doc.

Note: The example above assumes that LEAs have not been granted an exception from the state to exceed the 1% or 2% cap.

- **LEA A** does not exceed the 1% cap; it is 0.1% under the cap. However, LEA A exceeds the 2% cap by 0.6%. Because an LEA (or state) may exceed the 2% cap by the amount it is below the 1% cap, the LEA only needs to redistribute 0.5% of its proficient and advanced scores as non-proficient scores (0.9% + 2.6% = 3.5%; 3.5% - 3.0% = 0.5%).
- **LEA B** is under the 1% cap by 0.3% and over the 2% cap by 0.3 percent. An LEA or state may exceed the 2% cap provided that it does not have more than a total of 3% proficient and advanced scores from both types of alternate assessments (AA-AAS and AA-MAS). In this case, LEA B does not exceed that 3% limit, so it does not need to redistribute any scores.
- **LEA C** exceeds the 1% cap by 0.4%, but it is under the 2% cap by 0.5%. An LEA or state may not exceed the 1% cap (unless the LEA has an exception from the state), even if it has less than 2% of proficient or advanced scores on AA-MAS. Therefore, LEA C has 0.4% of its proficient and advanced scores from AA-AAS that must be redistributed as non-proficient scores.
- **LEA D** exceeds both the 1% and 2% caps (by 0.3% and 0.6%, respectively). Therefore, LEA D has 0.9% of its proficient and advanced scores from its alternate assessments that must be redistributed as non-proficient scores. (1.3% + 2.6% = 3.9%; 3.9% - 3.0% = 0.9%). Note that 0.3% must be from AA-AAS

scores since LEA D was 0.3% over the 1% cap (unless the LEA has an exception from the state).

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