

# What Works for Students in Assessment



The U.S. Congress has been working hard to pass federal legislation, and the U.S. Department of Education to adopt implementing regulations that reflect what works for students. While some of these measures are controversial, the intent is clear: do away with practices that have not worked and institute practices that do work.

Accountability for what works was a major focus of the 1994 amendments to the Elementary and Secondary Education Act (ESEA). These amendments required states who were recipients of Title I funds to develop challenging standards for all students and to demonstrate adequate yearly progress (continuous and substantial yearly improvement linked to performance on statewide assessments). States that did not have statewide assessments were given a timeframe in which to develop statewide assessments in math and reading or language arts. The accountability movement, now associated with the 2002 amendments to the ESEA, known as the No Child Left Behind Act (NCLB), actually began in 1994.

Why is this bit of history important when we talk about what works for students? This history helps provide a context for the 1997 amendments to the Individuals with Disabilities Education Act (IDEA), the subsequent guidance from the Office of Special Education Programs (OSEP) and the Office for Civil Rights (OCR) regarding inclusion of students in statewide assessment, and the NCLB and its implementing regulations regarding how students with disabilities will be included in the state's accountability system.

Consistent with the 1994 amendments to the ESEA, the 1997 amendments to IDEA provided for participation of students with disabilities in statewide assessment. Understanding the role of the IEP team in addressing the unique and individual needs of students with disabilities, IDEA '97 permitted the IEP team to determine how the student would participate in statewide assessment, including by way of modifications or alternate assessment with regulations implemented in 1999.

On August 24, 2000, the office of Special Education and Rehabilitative Services (OSERS), along with OSEP, issued a memorandum to state directors of special education (Memorandum 00-24) titled "Questions and Answers about Provisions in the Individuals with Disabilities Education Act Amendments of 1997 Relate to Students with Disabilities and State and District-wide Assessments." In light of today's discussion, one of the most important questions was:

## **May IEP teams exempt children with disabilities from participating in the state or district-wide assessment program?**

*No. The IEP team determines HOW individual students with disabilities participate in assessment programs, NOT WHETHER. The only students with disabilities who are exempted from participation in general state-and district-wide assessment programs are students with disabilities convicted as adults under state law and incarcerated in adult prisons. With this statutory exception, there should be no language in state or district assessment guidelines, rules, or regulations that permits IEP teams to exempt students from state-or district-wide assessment programs.*

*Section 504 prohibits exclusion from participation of, denial of benefits to, or discrimination against, individuals with disabilities on the basis of their disability in federally assisted programs or activities. Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by such an entity. Inclusion in assessments provides valuable information which benefits students either by indicating individual progress against standards or in evaluating*

*educational programs. In some states, participation in assessments is a means to access benefits such as promotion and graduation. Given these benefits, exclusion from assessment programs based on disability would potentially violate Section 504 and Title II of the ADA.*

If this sounds to you like what we are hearing today in connection with NCLB, you are right. NCLB is merely a continuation of an accountability movement that began in 1994. The bi-partisan NCLB, signed into law by President Bush on January 8, 2002, increased the stakes by adding specific corrective action and sanctions and requiring states to specify annual measurable objectives to measure student progress to ensure that all students, including groups of students disaggregated by poverty, race and ethnicity, disability, and limited English proficiency data, reach proficiency in reading and math within 12 years.

On December 9, 2003, the U.S. Department of Education issued its revised implementing regulations telling us exactly how students with disabilities would be included in the state's accountability system. Consistent with the statute, the regulations require that all students with disabilities be included in the state's accountability system. Consistent with IDEA, the IEP team determines how the student will participate in state-wide assessment. For purposes of adequate yearly progress (AYP) only one percent of students with the most significant cognitive disabilities may be counted as proficient or advanced based on alternate academic achievement standards set by the IEP team at the state and district level. All other students with disabilities must be measured against state achievement standards for the grade in which the student is enrolled.

## **How are these regulations part of what works for students?**

The U.S. Department of Education, in its comments to the regulations, tell us this:

*Only by including all students in accountability measures will certain unintended negative consequences be avoided. For example, we know from research that when students with disabilities are allowed to be excluded from school accountability measures, the rates of referral of students for special education increase dramatically. In addition, students with disabilities accrue positive benefits when they are included in school accountability systems. Educators realize that these students also count, just like all other students; they understand that they need to make sure expectations for these students are more likely to increase, and students with the most significant cognitive disabilities are assigned to a curriculum that is appropriately challenging. 68 FR 68698 (Dec. 9, 2003)*

## **So what works for students?**

When states, school districts, and individual campuses understand how NCLB and IDEA work together, students with disabilities benefit. Including students with disabilities in the state's accountability system helps ensure that the individual goals determined by the IEP are consistent, to the maximum extent appropriate, with other goals and standards for all children established by the state. As we move into another reauthorization of IDEA, a new approach to the identification of specific learning disabilities, and a progressively higher AYP bar, the only way to ensure that there is not an explosion of inappropriate referrals to avoid accountability, is to apply the same accountability standards to the achievement of students with disabilities. While states and school districts are held accountable for aggregate results, the IEP team still has full authority to set individual goals to ensure FAPE. The individual student is protected by the tension that is created between aggregate and individual accountability. ■

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