

**U.S. DEPARTMENT OF EDUCATION
POLICY AND PROGRAM STUDIES SERVICE
REPORT HIGHLIGHTS**

**State and Local Implementation of the No Child Left Behind Act
Volume V—Implementation of the 1 Percent Rule and 2 Percent Interim Policy Options**

Background

No Child Left Behind requires that all students be assessed academically in mathematics and reading, and for purposes of AYP, participation rates in statewide assessments must be 95 percent for all groups of students. While federal law does not require a particular type of assessment, it does require states to have at least one alternate assessment. These types of assessments are used to evaluate the performance of students with disabilities who are unable to participate in general state assessments even with appropriate accommodations. Alternate assessments must be linked to grade level content standards, and the U.S. Department of Education has provided flexibility that specifically addresses alternate assessments:

- A “1 percent rule” permits up to one percent of students with the most significant cognitive disabilities in a state or district to be counted as proficient based on alternate achievement standards.
- In May of 2005, the Department issued “2 percent interim policy options” while considering the adoption of a “2 percent rule” that would allow an additional 2 percent of all students to be counted as proficient based on modified achievement standards.¹

This report is part of the *Study of State Implementation of Accountability and Teacher Quality Under No Child Left Behind* (SSI-NCLB), which surveyed state officials in 2004–05 and 2006–07 and collected extant data about states’ implementation of NCLB assessment and accountability requirements. The purpose of this report is to respond to a commitment in the December 9, 2003 Title I regulation concerning the assessment of students with the most significant cognitive disabilities, which specified that “the Department intends to issue a report on the implementation of this regulation after two years of implementation” (Title I – Improving the Academic Achievement 2003, 68700).

This report includes the following key findings:

- **By 2005–06, all states had alternate assessment systems in place, but federal peer review teams found that 38 states had problems associated with their alternate assessments.**
 - Thirty-one states did not adequately show that their alternate assessment content standards were linked to content standards at each grade level;
 - Twenty-five states did not adequately demonstrate the reliability and validity of their alternate assessments; and
 - Fifteen states did not indicate how the alternate achievement standards were set.

¹ The regulations for alternate assessments based on modified achievement standards did not become final until April 4, 2007, which was after the data collection window for this report. As such, the policy options that were allowed under the proposed regulations and in effect during the data collection timeframe are discussed in this report.

- **A majority of states reported test participation rates for students with disabilities that exceeded the 95 percent requirement in 2004–05 (45 states in reading and 46 states in mathematics) and 2005–06 (42 to 43 states).**
 - In 2005-06, over four-fifths of the states reported that more than 90 percent of tested students with disabilities had participated in the general assessment with accommodations where appropriate.
- **Most states with accurate data in both 2004–05 and 2005–06 reported that the percentage of students with disabilities who participated in the alternate assessment based on alternate achievement standards was less than 10 percent of all students with disabilities who were tested.**
 - In 2005-06, for example, 34 out of 43 states with accurate data reported that the percentage of students with disabilities who participated in the alternate reading assessment based on alternate achievement standards was less than 10 percent of all students with disabilities who were tested; for mathematics, this was reported by 34 out of 42 states.
- **Twenty-two states granted exceptions to districts to exceed the 1 percent cap on the inclusion of proficient and advanced scores from alternate assessments based on alternate achievement standards for AYP calculations for 2005–06 testing, up slightly from 19 states in 2003-04.**
 - Nationally, fewer than 400 districts were granted exceptions to exceed this cap, excluding two rural states that were allowed to grant waivers to all of their districts because of their small populations and rural nature.
- **Twenty-one states used the 2 percent proxy option for AYP calculations in 2005-06 and 25 states did so in 2004-05.**
 - Data from a subset of states suggested that the results of the 2 percent proxy varied greatly by state: in Delaware, use of the 2 percent proxy did not enable any schools to make AYP, whereas 159 California schools made AYP in 2005-06 because of the 2 percent proxy.
- **States that opted to use any of the interim policy options for 2004-05 AYP had a higher rate of schools missing AYP for the achievement of students with disabilities in the prior year (2003-04) than states that did not use these policy options.**
- **From 2003-04 to 2004-05, across the 28 states for which there were adequate data, more than half (16 states) reduced the number and proportion of schools that missed AYP for the achievement of students with disabilities only.** Eleven of these 28 states with adequate data had not used any of the 2 percent interim policy options; all but one used the 1 percent rule in 2003-04 and all used the 1 percent rule in 2005-06.

This report is available on the U.S. Department of Education's Web site at www.ed.gov/about/offices/list/opepd/ppss/reports.html#title.