

1 The negotiating committee reached consensus on the following
2 regulatory language relating to Title I, Part A assessments:
3

4 **§200.2 State responsibilities for assessment.**

5 (a) (1) Each State, in consultation with its LEAs, must
6 implement a system of high-quality, yearly student academic
7 assessments that includes, at a minimum, academic assessments in
8 mathematics, reading/language arts, and science.

9 (2) (i) The State may also measure the achievement of
10 students in other academic subjects in which the State has
11 adopted challenging State academic standards.

12 (ii) If a State has developed assessments in other subjects
13 for all students, the State must include students participating
14 under subpart A of this part in those assessments.

15 (b) The assessments required under this section must--

16 (1) (i) Except as provided in §§200.3, 200.5(b), and 200.6(c)
17 and section 1204 of the Act, be the same assessments used to
18 measure the achievement of all students; and

19 (ii) Be administered to all students consistent with
20 §200.5(a);

21 (2) (i) Be designed to be valid and accessible for use by all
22 students, including students with disabilities and English
23 learners; and

24 (ii) Be developed, to the extent practicable, using the
25 principles of universal design for learning. For the purposes
26 of this section, "universal design for learning" means a
27 scientifically valid framework for guiding educational practice
28 that--

29 (A) Provides flexibility in the ways information is
30 presented, in the ways students respond or demonstrate knowledge
31 and skills, and in the ways students are engaged; and

32 (B) Reduces barriers in instruction, provides appropriate
33 accommodations, supports, and challenges, and maintains high
34 achievement expectations for all students, including students
35 with disabilities and English learners;

36 (3) (i) (A) Be aligned with the challenging State academic
37 standards; and

38 (B) Provide coherent and timely information about student
39 attainment of those standards and whether a student is
40 performing at the grade level in which the student is enrolled;

41 (ii) (A) (1) Be aligned with the challenging State academic
42 content standards; and

43 (2) Address the depth and breadth of those standards; and

44 (B) (1) Measure student performance based on challenging
45 State academic achievement standards that are aligned with
46 entrance requirements for credit-bearing coursework in the
47 system of public higher education in the State and relevant

1 State career and technical education standards consistent with
2 section 1111(b)(1)(D) of the Act; or
3 (2) With respect to alternate assessments for students with
4 the most significant cognitive disabilities, measure student
5 performance based on alternate academic achievement standards
6 defined by the State consistent with section 1111(b)(1)(E) of
7 the Act that reflect professional judgment as to the highest
8 possible standards achievable by such students to ensure that a
9 student who meets the alternate academic achievement standards
10 is on track to pursue postsecondary education or competitive,
11 integrated employment, consistent with the purposes of the
12 Rehabilitation Act of 1973, as amended by the Workforce
13 Innovation and Opportunity Act, as in effect on July 22, 2014;
14 and
15 (4)(i) Be valid, reliable, and fair for the purposes for
16 which the assessments are used; and
17 (ii) Be consistent with relevant, nationally recognized
18 professional and technical testing standards;
19 (5) Be supported by evidence that--
20 (i) The assessments are of adequate technical quality--
21 (A) For each purpose required under the Act; and
22 (B) Consistent with the requirements of this section; and
23 (ii) Is made available to the public, including on the
24 State's Web site;
25 (6) Be administered in accordance with the frequency
26 described in §200.5(a);
27 (7) Involve multiple up-to-date measures of student academic
28 achievement, including measures that assess higher-order
29 thinking skills and understanding of challenging content, as
30 defined by the State. These measures may--
31 (i) Include valid and reliable measures of student academic
32 growth at all achievement levels to help ensure that the
33 assessment results could be used to improve student instruction;
34 and
35 (ii) Be partially delivered in the form of portfolios,
36 projects, or extended performance tasks;
37 (8) Objectively measure academic achievement, knowledge, and
38 skills without evaluating or assessing personal or family
39 beliefs and attitudes, except that this provision does not
40 preclude the use of--
41 (i) Constructed-response, short answer, or essay questions;
42 or
43 (ii) Items that require a student to analyze a passage of
44 text or to express opinions;
45 (9) Provide for participation in the assessments of all
46 students in the grades assessed consistent with §§200.5(a) and
47 200.6;

- 1 (10) At the State's discretion, be administered through--
2 (i) A single summative assessment; or
3 (ii) Multiple statewide interim assessments during the
4 course of the academic year that result in a single summative
5 score that provides valid, reliable, and transparent information
6 on student achievement and, at the State's discretion, student
7 growth, consistent with paragraph (b)(4) of this section;
- 8 (11) Consistent with section 1111(b)(2)(B)(xi) and section
9 1111(h)(1)(C)(ii) of the Act, enable results to be disaggregated
10 within each State, LEA, and school by--
11 (i) Gender;
12 (ii) Each major racial and ethnic group;
13 (iii) Status as an English learner as defined in section
14 8101(20) of the Act;
15 (iv) Status as a migratory child as defined in section
16 1309(3) of title I, part C of the Act;
17 (v) Children with disabilities as defined in section 602(3)
18 of the Individuals with Disabilities Education Act (IDEA) as
19 compared to all other students;
20 (vi) Economically disadvantaged students as compared to
21 students who are not economically disadvantaged;
22 (vii) Status as a homeless child or youth as defined in
23 section 725(2) of title VII, subtitle B of the McKinney-Vento
24 Homeless Assistance Act, as amended;
25 (viii) Status as a child in foster care. "Foster care"
26 means 24-hour substitute care for children placed away from
27 their parents and for whom the agency under title IV-E of the
28 Social Security Act has placement and care responsibility. This
29 includes, but is not limited to, placements in foster family
30 homes, foster homes of relatives, group homes, emergency
31 shelters, residential facilities, child care institutions, and
32 preadoptive homes. A child is in foster care in accordance with
33 this definition regardless of whether the foster care facility
34 is licensed and payments are made by the State, tribal, or local
35 agency for the care of the child, whether adoption subsidy
36 payments are being made prior to the finalization of an
37 adoption, or whether there is Federal matching of any payments
38 that are made; and
39 (ix) Status as a student with a parent who is a member of
40 the armed forces on active duty or serves on full-time National
41 Guard duty, where "armed forces," "active duty," and "full-time
42 National Guard duty" have the same meanings given them in 10
43 U.S.C. 101(a)(4), 101(d)(1), and 101(d)(5);
- 44 (12) Produce individual student reports consistent with
45 §200.8(a); and
46 (13) Enable itemized score analyses to be produced and
47 reported to LEAs and schools consistent with §200.8(b).

1 (c) (1) At its discretion, a State may administer the
2 assessments required under this section in the form of computer-
3 adaptive assessments if such assessments meet the requirements
4 of section 1111(b) (2) (J) of the Act and this section. A
5 computer-adaptive assessment--

6 (i) Must measure a student's academic proficiency based on
7 the challenging State academic standards for the grade in which
8 the student is enrolled and growth toward those standards; and

9 (ii) May measure a student's academic proficiency and growth
10 using items above or below the student's grade level.

11 (2) If a State administers a computer-adaptive assessment,
12 the determination under paragraph (b) (3) (i) (B) of this section
13 of a student's academic proficiency for the grade in which the
14 student is enrolled must be reported on all reports required by
15 §200.8 and section 1111(h) of the Act.

16 (d) A State must submit evidence for peer review under
17 section 1111(a) (4) of the Act that its assessments under this
18 section and §§200.3, 200.4, 200.5(b), 200.6(c), 200.6(f) (1) and
19 (3), and 200.6(g) meet all applicable requirements.

20 (e) Information provided to parents under section 1111(b) (2)
21 of the Act must--

22 (i) Be in an understandable and uniform format;

23 (ii) Be, to the extent practicable, written in a language
24 that parents can understand or, if it is not practicable to
25 provide written translations to a parent with limited English
26 proficiency, be orally translated for such parent; and

27 (iii) Be, upon request by a parent who is an individual with
28 a disability as defined by the Americans with Disabilities Act
29 (ADA), provided in an alternative format accessible to that
30 parent.

31 (Authority: 10 U.S.C. 101(a) (4), (d) (1), and (d) (5); 20 U.S.C.
32 1003(24), 6311(a) (4), 6311(b) (2), and 6399(3); 42 U.S.C. 11434a;
33 and 45 CFR 1355(a))

1 **§200.3 Locally Selected, Nationally Recognized High School**
2 **Academic Assessments.**

3 (a) In general. (1) A State, at the State's discretion,
4 may permit an LEA to administer a nationally recognized high
5 school academic assessment in each of reading/language arts,
6 mathematics, or science, approved in accordance with paragraph
7 (b) of this section, in lieu of the respective statewide
8 assessment under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C) if such
9 assessment meets all requirements of this section.

10 (2) An LEA must administer the same locally selected,
11 nationally recognized academic assessment to all high school
12 students in the LEA consistent with the requirements in
13 §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), except for students with
14 the most significant cognitive disabilities who are assessed on
15 an alternate assessment aligned with alternate academic
16 achievement standards, consistent with §200.6(c).

17 (b) State approval. If a State chooses to allow an LEA to
18 administer a nationally recognized high school academic
19 assessment under paragraph (a) of this section, the State must--

20 (1) Establish and use technical criteria to determine if the
21 assessment--

22 (i) Is aligned with the challenging State academic
23 standards;

24 (ii) Addresses the depth and breadth of those standards;

25 (iii) Is equivalent to or more rigorous than the statewide
26 assessments under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as
27 applicable, with respect to--

28 (A) The coverage of academic content;

29 (B) The difficulty of the assessment;

30 (C) The overall quality of the assessment; and

31 (D) Any other aspects of the assessment that the State may
32 establish in its technical criteria;

33 (iv) Meets all requirements under §200.2(b), except for
34 §200.2(b)(1), and ensures that all high school students in the
35 LEA are assessed consistent with §§200.5(a) and 200.6; and

36 (v) Produces valid and reliable data on student academic
37 achievement with respect to all high school students and each
38 subgroup of high school students in the LEA that--

39 (A) Are comparable to student academic achievement data for
40 all high school students and each subgroup of high school
41 students produced by the statewide assessment;

42 (B) Are expressed in terms consistent with the State's
43 academic achievement standards under section 1111(b)(1)(A) of
44 the Act; and

45 (C) Provide unbiased, rational, and consistent
46 differentiation among schools within the State for the purpose

1 of the State-determined accountability system under section
2 1111(c) of the Act;

3 (2) Before approving any nationally recognized high school
4 academic assessment for use by an LEA in the State--

5 (i) Ensure that the use of appropriate accommodations under
6 §200.6(b) and (f) does not deny a student with a disability or
7 an English learner--

8 (A) The opportunity to participate in the assessment; and
9 (B) Any of the benefits from participation in the assessment
10 that are afforded to students without disabilities or students
11 who are not English learners; and

12 (ii) Submit evidence to the Secretary in accordance with the
13 requirements for peer review under section 1111(a)(4) of the Act
14 demonstrating that any such assessment meets the requirements of
15 this section; and

16 (3) Approve an LEA's request to use a locally selected,
17 nationally recognized high school academic assessment that meets
18 the requirements of this section.

19 (c) LEA applications. (1) Before an LEA requests
20 approval from the State to use a locally selected, nationally
21 recognized high school academic assessment, the LEA must--

22 (i) Notify all parents of high school students it serves--

23 (A) That the LEA intends to request approval from the State
24 to use a locally selected, nationally recognized high school
25 academic assessment in place of the statewide academic
26 assessment under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as
27 applicable;

28 (B) Of how parents may provide meaningful input regarding
29 the LEA's request; and

30 (C) Of any effect of such request on the instructional
31 program in the LEA; and

32 (ii) Provide an opportunity for meaningful consultation to
33 all public charter schools whose students would be included in
34 such assessments.

35 (2) As part of requesting approval to use a locally
36 selected, nationally recognized high school academic assessment,
37 an LEA must--

38 (i) Update its LEA plan under section 1112 or section 8305
39 of the Act, including to describe how the request was developed
40 consistent with all requirements for consultation under sections
41 1112 and 8538 of the Act; and

42 (ii) If the LEA is a charter school under State law, provide
43 an assurance that the use of the assessment is consistent with
44 State charter school law and it has consulted with the
45 authorized public chartering agency.

46 (3) Upon approval, the LEA must notify all parents of high
47 school students it serves that the LEA received approval and

1 will use such locally selected, nationally recognized high
2 school academic assessment instead of the statewide academic
3 assessment under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as
4 applicable.

5 (4) In each subsequent year following approval in which the
6 LEA elects to administer a locally selected, nationally
7 recognized high school academic assessment, the LEA must notify-
8 -

9 (i) The State of its intention to continue administering
10 such assessment; and

11 (ii) Parents of which assessment the LEA will administer to
12 students to meet the requirements of §200.5(a)(1)(i)(B) and
13 (a)(1)(ii)(C), as applicable, at the beginning of the school
14 year.

15 (5) The notices to parents under this paragraph (c) must be
16 consistent with §200.2(e).

17 (d) Definition. "Nationally recognized high school academic
18 assessment" means an assessment of high school students'
19 knowledge and skills that is administered in multiple States and
20 is recognized by institutions of higher education in those or
21 other States for the purposes of entrance or placement into
22 courses in postsecondary education or training programs.

23 (Authority: 20 U.S.C. 6311(b)(2)(H), 6312(a), 7483, 7918; 29
24 U.S.C. 794; 42 U.S.C. 2000d-1, 12102, and 12132)

1 **§200.4 State law exception.**

2 (a) If a State provides satisfactory evidence to the
3 Secretary that neither the State educational agency (SEA) nor
4 any other State government official, agency, or entity has
5 sufficient authority under State law to adopt academic content
6 standards, student academic achievement standards, and academic
7 assessments applicable to all students enrolled in the State's
8 public schools, the State may meet the requirements under
9 §§200.1 and 200.2 by--

10 (1) Adopting academic standards and academic assessments
11 that meet the requirements of §§200.1 and 200.2 on a statewide
12 basis and limiting their applicability to students served under
13 subpart A of this part; or

14 (2) Adopting and implementing policies that ensure that each
15 LEA in the State that receives funds under subpart A of this
16 part will adopt academic standards and academic assessments
17 aligned with those standards that--

18 (i) Meet the requirements in §§200.1 and 200.2; and

19 (ii) Are applicable to all students served by the LEA.

20 (b) A State that qualifies under paragraph (a) of this
21 section must--

22 (1) Establish technical criteria for evaluating whether each
23 LEA's--

24 (i) Academic content and student academic achievement
25 standards meet the requirements in §200.1; and

26 (ii) Academic assessments meet the requirements in §200.2,
27 particularly regarding validity and reliability, technical
28 quality, alignment with the LEA's academic standards, and
29 inclusion of all students in the grades assessed;

30 (2) Review and approve each LEA's academic standards and
31 academic assessments to ensure that they--

32 (i) Meet or exceed the State's technical criteria; and

33 (ii) For purposes of this section--

34 (A) Are equivalent to one another in their content coverage,
35 difficulty, and quality;

36 (B) Have comparable validity and reliability with respect to
37 groups of students described in section 1111(c)(2) of the Act;
38 and

39 (C) Provide unbiased, rational, and consistent determinations
40 of the annual progress of schools within the State; and

41 (3) Be able to aggregate, with confidence, data from local
42 assessments to make accountability determinations under section
43 1111(c) of the Act.

44 (Authority: 20 U.S.C. 6311(b)(2)(E))

1 **§200.5 Assessment administration.**

2 (a) Frequency. (1) A State must administer the assessments
3 required under §200.2 annually as follows:

4 (i) With respect to both the reading/language arts and
5 mathematics assessments--

6 (A) In each of grades 3 through 8; and

7 (B) At least once in grades 9 through 12.

8 (ii) With respect to science assessments, not less than one
9 time during each of--

10 (A) Grades 3 through 5;

11 (B) Grades 6 through 9; and

12 (C) Grades 10 through 12.

13 (2) With respect to any other subject chosen by a State, the
14 State may administer the assessments at its discretion.

15 (b) Middle school mathematics exception. A State that
16 administers an end-of-course mathematics assessment to meet the
17 requirements under paragraph (a)(1)(i)(B) of this section may
18 exempt an eighth-grade student from the mathematics assessment
19 typically administered in eighth grade under paragraph

20 (a)(1)(i)(A) of this section if--

21 (1) The student instead takes the end-of-course mathematics
22 assessment the State administers to high school students under
23 paragraph (a)(1)(i)(B) of this section;

24 (2) The student's performance on the high school assessment
25 is used in the year in which the student takes the assessment
26 for purposes of measuring academic achievement under section
27 1111(c)(4)(B)(i) of the Act and participation in assessments
28 under section 1111(c)(4)(E) of the Act;

29 (3) In high school--

30 (i) The student takes a State-administered end-of-course
31 assessment or nationally recognized high school academic
32 assessment as defined in §200.3(d) in mathematics that--

33 (A) Is more advanced than the assessment the State
34 administers under paragraph (a)(1)(i)(B) of this section; and

35 (B) Provides for appropriate accommodations consistent with
36 §200.6; and

37 (ii) The student's performance on the more advanced
38 mathematics assessment is used for purposes of measuring
39 academic achievement under section 1111(c)(4)(B)(i) of the Act
40 and participation in assessments under section 1111(c)(4)(E) of
41 the Act; and

42 (4) The State describes in its State plan, with regard to
43 this exception, its strategies to provide all students in the
44 State the opportunity to be prepared for and to take advanced
45 mathematics coursework in middle school.

46 (Authority: 20 U.S.C. 6311(b)(2)(B)(v) and (b)(2)(C))

1 **§200.6 Inclusion of all students.**

2 A State's academic assessment system required under §200.2
3 must provide for the participation of all students in the grades
4 assessed under §200.5(a) in accordance with this section.

5 (a) Students with disabilities in general. (1) A State
6 must include students with disabilities in all assessments under
7 section 1111(b)(2) of the Act, with appropriate accommodations
8 consistent with paragraphs (b), (f)(1), and (f)(3)(iv) of this
9 section. For purposes of this section, students with
10 disabilities, collectively, are--

11 (i) All children with disabilities as defined under section
12 602(3) of the IDEA;

13 (ii) Students with the most significant cognitive
14 disabilities who are identified from among the students in
15 paragraph (a)(1)(i) of this section; and

16 (iii) Students with disabilities covered under other acts,
17 including--

18 (A) Section 504 of the Rehabilitation Act of 1973, as
19 amended; and

20 (B) Title II of the ADA.

21 (2)(i) A student with a disability under paragraph (a)(1)(i)
22 or (iii) of this section must be assessed with an assessment
23 aligned with the challenging State academic standards for the
24 grade in which the student is enrolled.

25 (ii) If a State has adopted alternate academic achievement
26 standards permitted under section 1111(b)(1)(E) of the Act for
27 students with the most significant cognitive disabilities, a
28 student with the most significant cognitive disabilities under
29 paragraph (a)(1)(ii) of this section may be assessed with--

30 (A) The general assessment under paragraph (a)(2)(i) of this
31 section; or

32 (B) An alternate assessment under paragraph (c) of this
33 section aligned with the challenging State academic content
34 standards for the grade in which the student is enrolled and the
35 State's alternate academic achievement standards.

36 (b) Appropriate accommodations. (1) A State's academic
37 assessment system must provide, for each student with a
38 disability under paragraph (a) of this section, the appropriate
39 accommodations, such as interoperability with, and ability to
40 use, assistive technology devices consistent with nationally
41 recognized accessibility standards, that are necessary to
42 measure the academic achievement of the student consistent with
43 paragraph (a)(2) of this section, as determined by--

44 (i) For each student under paragraph (a)(1)(i) and (ii) of
45 this section, the student's IEP team;

46 (ii) For each student under paragraph (a)(1)(iii)(A) of this
47 section, the student's placement team; or

1 (iii) For each student under paragraph (a) (1) (iii) (B) of
2 this section, the individual or team designated by the LEA to
3 make these decisions.

4 (2) A State must--

5 (i) Develop, disseminate information to, at a minimum,
6 schools and parents, and promote the use of appropriate
7 accommodations to ensure that all students with disabilities are
8 able to participate in academic instruction and assessments
9 consistent with paragraph (a) (2) of this section; and

10 (ii) Ensure that general and special education teachers,
11 paraprofessionals, specialized instructional support personnel,
12 and other appropriate staff receive necessary training to
13 administer assessments and know how to administer assessments,
14 including, as necessary, alternate assessments under paragraphs
15 (c) and (f) (3) (v) of this section, and know how to make use of
16 appropriate accommodations during assessment for all students
17 with disabilities.

18 (3) A State must ensure that the use of appropriate
19 accommodations under this paragraph (b) does not deny a student
20 with a disability--

21 (i) The opportunity to participate in the assessment; and

22 (ii) Any of the benefits from participation in the
23 assessment that are afforded to students without disabilities.

24 (c) Alternate assessments aligned with alternate academic
25 achievement standards for students with the most significant
26 cognitive disabilities. (1) If a State has adopted alternate
27 academic achievement standards permitted under section
28 1111(b) (1) (E) of the Act for students with the most significant
29 cognitive disabilities, the State must measure the achievement
30 of those students with an alternate assessment that--

31 (i) Is aligned with the challenging State academic content
32 standards under section 1111(b) (1) of the Act for the grade in
33 which the student is enrolled;

34 (ii) Yields results for those students relative to the
35 alternate academic achievement standards; and

36 (iii) At the State's discretion, provides valid and reliable
37 measures of student growth at all alternate academic achievement
38 levels to help ensure that the assessment results can be used to
39 improve student instruction.

40 (2) For each subject for which assessments are administered
41 under §200.2(a) (1), the total number of students assessed in
42 that subject using an alternate assessment aligned with
43 alternate academic achievement standards under paragraph (c) (1)
44 of this section may not exceed 1.0 percent of the total number
45 of students in the State who are assessed in that subject.

46 (3) A State must--

1 (i) Not prohibit an LEA from assessing more than 1.0 percent
2 of its assessed students in a given subject with an alternate
3 assessment aligned with alternate academic achievement
4 standards;

5 (ii) Require that an LEA submit information justifying the
6 need of an LEA to assess more than 1.0 percent of its assessed
7 students in an assessed subject with such an alternate
8 assessment;

9 (iii) Provide appropriate oversight, as determined by the
10 State, of an LEA that is required to submit information to the
11 State; and

12 (iv) Make the information submitted by an LEA under
13 paragraph (c)(3)(ii) of this section publicly available,
14 provided that such information does not reveal personally
15 identifiable information about an individual student.

16 (4) If a State anticipates that it will exceed the cap
17 under paragraph (c)(2) of this section with respect to any
18 subject for which assessments are administered under
19 §200.2(a)(1) in any school year, the State may request that the
20 Secretary waive the cap for the relevant subject, pursuant to
21 section 8401 of the Act, for one year. Such request must--

22 (i) Be submitted at least 90 days prior to the start of the
23 State's first testing window;

24 (ii) Provide State-level data, from the current or previous
25 school year, to show--

26 (A) The number and percentage of students in each subgroup
27 of students defined in section 1111(c)(2)(A), (B), and (D) of
28 the Act who took the alternate assessment aligned with alternate
29 academic achievement standards; and

30 (B) The State has measured the achievement of at least 95
31 percent of all students and 95 percent of students in the
32 children with disabilities subgroup under section 1111(c)(2)(C)
33 of the Act who are enrolled in grades for which the assessment
34 is required under §200.5(a);

35 (iii) Include assurances from the State that it has verified
36 that each LEA that the State anticipates will assess more than
37 1.0 percent of its assessed students in any subject for which
38 assessments are administered under §200.2(a)(1) in that school
39 year using an alternate assessment aligned with alternate
40 academic achievement standards, and any other LEA that the State
41 determines will significantly contribute to the State's
42 exceeding the cap under paragraph (c)(2) of this section--

43 (A) Followed each of the State's guidelines under paragraph
44 (d) of this section, including criteria in paragraph (d)(1)(i)-
45 (iii) except paragraph (d)(6);

46 (B) Will not significantly increase, from the prior year,
47 the extent to which the LEA assessed more than 1.0 percent of

1 students in any subject for which assessments were administered
2 under §200.2(a)(1) in that school year using an alternate
3 assessment aligned with alternate academic achievement standards
4 unless the LEA has demonstrated to the State a higher prevalence
5 of students with the most significant cognitive disabilities
6 than were enrolled in assessed grades in the prior year; and

7 (C) Will address any disproportionality in the number and
8 percentage of students in any particular subgroup under section
9 1111(c)(2)(A), (B), or (D) of the Act taking an alternate
10 assessment aligned with alternate academic achievement
11 standards;

12 (iv) Include a plan and timeline by which--

13 (A) The State will improve the implementation of its
14 guidelines under paragraph (d) of this section, including by
15 reviewing and, if necessary, revising its definition under
16 paragraph (d)(1) of this section, so that the State meets the
17 cap in paragraph (c)(2) of this section in each subject for
18 which assessments are administered under §200.2(a)(1) in future
19 school years;

20 (B) The State will take additional steps to support and
21 provide appropriate oversight to each LEA that the State
22 anticipates will assess more than 1.0 percent of its assessed
23 students in a subject in a school year using an alternate
24 assessment aligned with alternate academic achievement
25 standards, and any other LEA that the State determines will
26 significantly contribute to the State's exceeding the cap under
27 paragraph (c)(2) of this section, to ensure that only students
28 with the most significant cognitive disabilities take an
29 alternate assessment aligned with alternate academic achievement
30 standards. The State must describe how it will monitor and
31 regularly evaluate each such LEA to ensure that the LEA provides
32 sufficient training such that school staff who participate as
33 members of an IEP team or other placement team understand and
34 implement the guidelines established by the State under
35 paragraph (d) of this section so that all students are
36 appropriately assessed; and

37 (C) The State will address any disproportionality in the
38 number and percentage of students taking an alternate assessment
39 aligned with alternate academic achievement standards as
40 identified through the data provided in accordance with
41 paragraph (c)(4)(ii)(A) of this section; and

42 (v) If the State is requesting to extend a waiver for an
43 additional year, meet the requirements in paragraph (c)(4)(i)
44 through (iv) and demonstrate substantial progress towards
45 achieving each component of the prior year's plan and timeline
46 required under paragraph (c)(4)(iv) of this section.

1 (5) Reporting. A State must report separately to the
2 Secretary, under section 1111(h)(5) of the Act, the number and
3 percentage of children with disabilities under paragraph
4 (a)(1)(i) and (ii) of this section taking--

5 (i) General assessments described in §200.2;
6 (ii) General assessments with accommodations; and
7 (iii) Alternate assessments aligned with alternate academic
8 achievement standards under this paragraph (c).

9 (6) A State may not develop, or implement for use under this
10 part, any alternate or modified academic achievement standards
11 that are not alternate academic achievement standards for
12 students with the most significant cognitive disabilities that
13 meet the requirements of section 1111(b)(1)(E) of the Act.

14 (7) For students with the most significant cognitive
15 disabilities, a computer-adaptive alternate assessment aligned
16 with alternate academic achievement standards must--

17 (i) Assess a student's academic achievement based on the
18 challenging State academic content standards for the grade in
19 which the student is enrolled;

20 (ii) Meet the requirements for alternate assessments aligned
21 with alternate academic achievement standards under this
22 paragraph (c); and

23 (iii) Meet the requirements in §200.2, except that the
24 alternate assessment need not measure a student's academic
25 proficiency based on the challenging State academic achievement
26 standards for the grade in which the student is enrolled and
27 growth toward those standards.

28 (d) State guidelines. If a State adopts alternate academic
29 achievement standards for students with the most significant
30 cognitive disabilities and administers an alternate assessment
31 aligned with those standards, the State must--

32 (1) Establish, consistent with section 612(a)(16)(C) of the
33 IDEA, and monitor implementation of clear and appropriate
34 guidelines for IEP teams to apply in determining, on a case-by-
35 case basis, which students with the most significant cognitive
36 disabilities will be assessed based on alternate academic
37 achievement standards. Such guidelines must include a State
38 definition of "students with the most significant cognitive
39 disabilities" that would address factors related to cognitive
40 functioning and adaptive behavior, such that--

41 (i) The identification of a student as having a particular
42 disability as defined in the IDEA must not determine whether a
43 student is a student with the most significant cognitive
44 disabilities;

45 (ii) A student with the most significant cognitive
46 disabilities must not be identified solely on the basis of the
47 student's previous low academic achievement, or status as an

1 English learner, or the student's previous need for
2 accommodations to participate in general State or districtwide
3 assessments; and

4 (iii) Students with the most significant cognitive
5 disabilities require extensive, direct individualized
6 instruction and substantial supports to achieve measurable gains
7 on the challenging State academic content standards for the
8 grade in which the student is enrolled;

9 (2) Provide to IEP teams a clear explanation of the
10 differences between assessments based on grade-level academic
11 achievement standards and those based on alternate academic
12 achievement standards, including any effects of State and local
13 policies on a student's education resulting from taking an
14 alternate assessment aligned with alternate academic achievement
15 standards, such as how participation in such assessments may
16 delay or otherwise affect the student from completing the
17 requirements for a regular high school diploma;

18 (3) Ensure that parents of students selected to be assessed
19 using an alternate assessment aligned with alternate academic
20 achievement standards under the State's guidelines in this
21 paragraph (d) are informed that their child's achievement will
22 be measured based on alternate academic achievement standards,
23 and how participation in such assessments may delay or otherwise
24 affect the student from completing the requirements for a
25 regular high school diploma consistent with §200.2(e);

26 (4) Not preclude a student with the most significant
27 cognitive disabilities who takes an alternate assessment aligned
28 with alternate academic achievement standards from attempting to
29 complete the requirements for a regular high school diploma;

30 (5) Promote, consistent with requirements under the IDEA,
31 the involvement and progress of students with the most
32 significant cognitive disabilities in the general education
33 curriculum;

34 (6) Ensure that it describes in its State plan the steps it
35 has taken to incorporate the principles of universal design for
36 learning, to the extent feasible, in any alternate assessments
37 aligned with alternate academic achievement standards that the
38 State administers; and

39 (7) Develop, disseminate information on, and promote the use
40 of appropriate accommodations consistent with paragraph (b) of
41 this section to ensure that a student with significant cognitive
42 disabilities who does not meet the criteria in paragraph

43 (a)(1)(ii) of this section--

44 (i) Participates in academic instruction and assessments for
45 the grade level in which the student is enrolled; and

46 (ii) Is tested based on challenging State academic standards
47 for the grade level in which the student is enrolled.

1 (e) Definitions related to students with disabilities.
2 Consistent with 34 CFR 300.5, "assistive technology device"
3 means any item, piece of equipment, or product system, whether
4 acquired commercially off the shelf, modified, or customized,
5 that is used to increase, maintain, or improve the functional
6 capabilities of a child with a disability. The term does not
7 include a medical device that is surgically implanted, or the
8 replacement of such device.

9 (f) English learners. A State must include English learners
10 in its academic assessments required under §200.2 as follows:

11 (1) In general. (i) Consistent with §200.2 and paragraph
12 (f)(2) and (f)(4) of this section, a State must assess English
13 learners in a valid and reliable manner that includes--

14 (A) Appropriate accommodations with respect to a student's
15 status as an English learner and, if applicable, the student's
16 status under paragraph (a) of this section; and

17 (B) To the extent practicable, assessments in the language
18 and form most likely to yield accurate and reliable information
19 on what those students know and can do to determine the
20 students' mastery of skills in academic content areas until the
21 students have achieved English language proficiency.

22 (ii) To meet the requirements under paragraph (f)(1)(i) of
23 this section, the State must, in its State plan--

24 (A) Ensure that the use of appropriate accommodations under
25 this paragraph (f) and, if applicable, under paragraph (b) of
26 this section does not deny an English learner--

27 (1) The opportunity to participate in the assessment; and
28 (2) Any of the benefits from participation in the assessment
29 that are afforded to students who are not English learners;

30 (B) Provide its definition for "languages other than English
31 that are present to a significant extent in the participating
32 student population," consistent with paragraph (f)(1)(iv) of
33 this section, and identify the specific languages that meet that
34 definition;

35 (C) Identify any existing assessments in languages other
36 than English, and specify for which grades and content areas
37 those assessments are available;

38 (D) Indicate the languages other than English that are
39 present to a significant extent in the participating student
40 population, as defined by the State, for which yearly student
41 academic assessments are not available and are needed; and

42 (E) Describe how it will make every effort to develop
43 assessments, at a minimum, in languages other than English that
44 are present to a significant extent in the participating student
45 population including by providing--

1 (1) The State's plan and timeline for developing such
2 assessments, including a description of how it met the
3 requirements of paragraph (f)(1)(iv) of this section;

4 (2) A description of the process the State used to gather
5 meaningful input on assessments in languages other than English,
6 collect and respond to public comment, and consult with
7 educators, parents and families of English learners, and other
8 stakeholders; and

9 (3) As applicable, an explanation of the reasons the State
10 has not been able to complete the development of such
11 assessments despite making every effort.

12 (iii) A State may request assistance from the Secretary in
13 identifying linguistically accessible academic assessments that
14 are needed.

15 (iv) In determining which languages other than English are
16 present to a significant extent in a State's participating
17 student population, a State must, at a minimum--

18 (A) Ensure that its definition of "languages other than
19 English that are present to a significant extent in the
20 participating student population" encompasses at least the most
21 populous language other than English spoken by the State's
22 participating student population;

23 (B) Consider languages other than English that are spoken by
24 distinct populations of English learners, including English
25 learners who are migratory, English learners who were not born
26 in the United States, and English learners who are Native
27 Americans; and

28 (C) Consider languages other than English that are spoken by
29 a significant portion of the participating student population in
30 one or more of a State's LEAs as well as languages spoken by a
31 significant portion of the participating student population
32 across grade levels.

33 (2) Assessing reading/language arts in English. (i) A
34 State must assess, using assessments written in English, the
35 achievement of an English learner in meeting the State's
36 reading/language arts academic standards if the student has
37 attended schools in the United States, excluding Puerto Rico
38 and, if applicable, students in Native American language schools
39 or programs consistent with paragraph (g) of this section, for
40 three or more consecutive years.

41 (ii) An LEA may continue, for no more than two additional
42 consecutive years, to assess an English learner under paragraph
43 (f)(1)(i)(B) of this section if the LEA determines, on a case-
44 by-case individual basis, that the student has not reached a
45 level of English language proficiency sufficient to yield valid
46 and reliable information on what the student knows and can do on
47 reading/language arts assessments written in English.

1 (iii) The requirements in paragraph (f)(2)(i) and (ii) of
2 this section do not permit an exemption from participating in
3 the State assessment system for English learners.

4 (3) Assessing English proficiency. (i) Each State must--

5 (A) Develop a uniform statewide assessment of English
6 language proficiency, including reading, writing, speaking, and
7 listening skills; and

8 (B) Require each LEA to use such assessment to assess
9 annually the English language proficiency, including reading,
10 writing, speaking, and listening skills, of all English learners
11 in schools served by the LEA.

12 (ii) The assessment under paragraph (3)(i) of this section
13 must be--

14 (A) Aligned with the State's English language proficiency
15 standards under section 1111(b)(1)(F) of the Act and provide
16 coherent and timely information about each student's attainment
17 of those standards, including information provided to parents
18 consistent with §200.2(e); and

19 (B) Developed and used consistent with the requirements of
20 §200.2(b)(2), (b)(4), and (b)(5).

21 (iii) If a State develops a computer-adaptive assessment to
22 measure English language proficiency, the State must ensure that
23 the computer-adaptive assessment--

24 (A) Assesses a student's language proficiency, which may
25 include growth toward proficiency, in order to measure the
26 student's acquisition of English; and

27 (B) Meets the requirements for English language proficiency
28 assessments in paragraph (f) of this section.

29 (iv) A State must provide appropriate accommodations that
30 are necessary to measure a student's English language
31 proficiency relative to the State's English language proficiency
32 standards under section 1111(b)(1)(F) of the Act for each
33 English learner covered under paragraph (a)(1)(i) or (a)(1)(iii)
34 of this section.

35 (v) A State must provide for an alternate English language
36 proficiency assessment for each English learner covered under
37 paragraph (a)(1)(ii) of this section who cannot participate in
38 the assessment under paragraph (f)(3)(i) of this section even
39 with appropriate accommodations.

40 (4) Recently arrived English learners. (i)(A) A State may
41 exempt a recently arrived English learner, as defined in
42 paragraph (f)(5)(i) of this section, from one administration of
43 the State's reading/language arts assessment under §200.2.

44 (B) If the State does not assess a recently arrived English
45 learner on the State's reading/language arts assessment, the
46 State must count the year in which the assessment would have
47 been administered as the first of the three years in which the

1 student may take the State's reading/language arts assessment in
2 a native language consistent with paragraph (f)(2)(i) of this
3 section.

4 (C) The State and its LEAs must report on State and local
5 report cards required under section 1111(h) of the Act the
6 number of recently arrived English learners who are not assessed
7 on the State's reading/language arts assessment.

8 (D) Nothing in this paragraph (f) relieves an LEA from its
9 responsibility under applicable law to provide recently arrived
10 English learners with appropriate instruction to enable them to
11 attain English language proficiency as well as grade-level
12 content knowledge in reading/language arts, mathematics, and
13 science.

14 (ii) A State must assess the English language proficiency of
15 a recently arrived English learner pursuant to paragraph (f)(3)
16 of this section.

17 (iii) A State must assess the mathematics and science
18 achievement of a recently arrived English learner pursuant to
19 §200.2 with the frequency described in §200.5(a).

20 (5) Definitions related to English learners.

21 (i) A "recently arrived English learner" is an English
22 learner who has been enrolled in schools in the United States
23 for less than twelve months.

24 (ii) The phrase "schools in the United States" includes only
25 schools in the 50 States and the District of Columbia.

26 (g) Students in Native American language schools or
27 programs. (1) Except as provided in paragraph (g)(2) of this
28 section, a State is not required to assess, using assessments
29 written in English, student achievement in meeting the
30 challenging State academic standards in reading/language arts
31 for a student who is enrolled in a school or program that
32 provides instruction primarily in a Native American language if-
33 -

34 (i) The State provides an assessment of reading/language
35 arts in the Native American language to all students in the
36 school or program, consistent with the requirements of §200.2;

37 (ii) The State submits the assessment of reading/language
38 arts in the Native American language for peer review as part of
39 its State assessment system, consistent with §200.2(d); and

40 (iii) For an English learner, as defined in section
41 8101(2)(C)(ii) of the Act, the State continues to assess the
42 English language proficiency of such English learner, using the
43 annual English language proficiency assessment required under
44 §200.6(f)(3), and provides appropriate services to enable him or
45 her to attain proficiency in English.

46 (2) Notwithstanding §200.2(f)(2), the State must assess
47 under §200.5(a)(1)(i)(A), using assessments written in English

1 by no later than the end of the eighth grade, the achievement of
2 each student enrolled in such a school or program in meeting the
3 challenging State academic standards in reading/language arts.

4 (h) Definition. For the purpose of this section, "Native
5 American" means "Indian" as defined in section 6151 of the Act,
6 which includes Alaska Native and members of federally recognized
7 or state-recognized tribes; Native Hawaiian; and Native American
8 Pacific Islander.

9 (i) Highly mobile students. The State must include in its
10 assessment system the following highly mobile student
11 populations as defined in §200.2(b)(11):

12 (1) Students with status as a migratory child.

13 (2) Students with status as a homeless child or youth.

14 (3) Students with status as a child in foster care.

15 (4) Students with status as a student with a parent who is a
16 member of the armed forces on active duty.

17 (Authority: 20 U.S.C. 1400 et seq. and 6311(b)(2); 25 U.S.C.
18 2902; 29 U.S.C. 794; 42 U.S.C. 2000d-1, 11434a, and 12132; and
19 34 CFR 300.5)

1 **§200.8 Assessment reports.**

2 (a) Student reports. A State's academic assessment system
3 must produce individual student interpretive, descriptive, and
4 diagnostic reports that--

5 (1)(i) Include information regarding achievement on the
6 academic assessments under §200.2 measured against the State's
7 student academic achievement standards; and

8 (ii) Help parents, teachers, and principals to understand
9 and address the specific academic needs of students; and

10 (2) Are provided to parents, teachers, and principals--

11 (i) As soon as is practicable after the assessment is given;
12 and

13 (ii) In an understandable and uniform format consistent with
14 §200.2(e).

15 (b) Itemized score analyses for LEAs and schools. (1) A
16 State's academic assessment system must produce and report to
17 LEAs and schools itemized score analyses, consistent with
18 §200.2(b)(13), so that parents, teachers, principals, and
19 administrators can interpret and address the specific academic
20 needs of students.

21 (2) The requirement to report itemized score analyses in
22 paragraph (b)(1) of this section does not require the release of
23 test items.

24 (Authority: 20 U.S.C. 6311(b)(2)(B)(x) and (xii))

1 **§200.9 Deferral of assessments.**

2 (a) A State may defer the start or suspend the
3 administration of the assessments required under §200.2 for one
4 year for each year for which the amount appropriated for State
5 assessment grants under section 1002(b) of the Act is less than
6 \$369,100,000.

7 (b) A State may not cease the development of the assessments
8 referred to in paragraph (a) of this section even if sufficient
9 funds are not appropriated under section 1002(b) of the Act.

10 (Authority: 20 U.S.C. 6302(b), 6311(b)(2)(I), and 6363(a))

1 **§200.10 Applicability of a State's academic assessments to**
2 **private schools and private school students.**

3 (a) Nothing in §200.1 or §200.2 requires a private school,
4 including a private school whose students receive services under
5 subpart A of this part, to participate in a State's academic
6 assessment system.

7 (b) (1) If an LEA provides services to eligible private
8 school students under subpart A of this part, the LEA must,
9 through timely consultation with appropriate private school
10 officials, determine how services to eligible private school
11 students will be academically assessed and how the results of
12 that assessment will be used to improve those services.

13 (2) The assessments referred to in paragraph (b) (1) of this
14 section may be the State's academic assessments under §200.2 or
15 other appropriate academic assessments.

16 (Authority: 20 U.S.C. 6320 and 7886(a))