

§ 200.6

34 CFR Ch. II (7–1–08 Edition)

assessments required under § 200.2 must be administered at least once during—

- (1) Grades 3 through 5;
- (2) Grades 6 through 9; and
- (3) Grades 10 through 12.

(c) *Timing of results.* Beginning with the 2002–2003 school year, a State must promptly provide the results of its assessments no later than before the beginning of the next school year to LEAs, schools, and teachers in a manner that is clear and easy to understand.

(Authority: 20 U.S.C. 6311(b)(3))

[67 FR 45041, July 5, 2002]

§ 200.6 Inclusion of all students.

A State's academic assessment system required under § 200.2 must provide for the participation of all students in the grades assessed in accordance with this section.

(a) *Students eligible under IDEA and Section 504—(1) Appropriate accommodations.* (i) A State's academic assessment system must provide—

(A) For each student with a disability, as defined under section 602(3) of the IDEA, appropriate accommodations that the student's IEP team determines are necessary to measure the academic achievement of the student relative to the State's academic content and academic achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c); and

(B) For each student covered under section 504 of the Rehabilitation Act of 1973, as amended (Section 504), appropriate accommodations that the student's placement team determines are necessary to measure the academic achievement of the student relative to the State's academic content and academic achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c).

(ii) A State must—

(A) Develop, disseminate information on, and promote the use of appropriate accommodations to increase the number of students with disabilities who are tested against academic achievement standards for the grade in which a student is enrolled; and

(B) Ensure that regular and special education teachers and other appropriate staff know how to administer assessments, including making appropriate use of accommodations, for students with disabilities and students covered under Section 504.

(2) *Alternate assessments.* (i) The State's academic assessment system must provide for one or more alternate assessments for a child with a disability as defined under section 602(3) of the Individuals with Disabilities Education Act (IDEA) whom the child's IEP team determines cannot participate in all or part of the State assessments under paragraph (a)(1) of this section, even with appropriate accommodations.

(ii)(A) Alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science, except as provided in the following paragraph.

(B) For students with the most significant cognitive disabilities, alternate assessments may yield results that measure the achievement of those students relative to the alternate academic achievement standards the State has defined under § 200.1(d).

(iii) If a State permits the use of alternate assessments that yield results based on alternate academic achievement standards, the State must document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum.

(3) *Alternate assessments that are based on modified academic achievement standards.* (i) To assess students with disabilities based on modified academic achievement standards, a State may develop a new alternate assessment or adapt an assessment based on grade-level academic achievement standards.

(ii) An alternate assessment under paragraph (a)(3)(i) of this section must—

(A) Be aligned with the State's grade-level academic content standards;

(B) Yield results that measure the achievement of those students separately in reading/language arts and mathematics relative to the modified academic achievement standards;

(C) Meet the requirements in §§200.2 and 200.3, including the requirements relating to validity, reliability, and high technical quality; and

(D) Fit coherently in the State's overall assessment system under §200.2.

(4) *Reporting.* A State must report separately to the Secretary, under section 1111(h)(4) of the Act, the number and percentage of students with disabilities taking—

(i) Regular assessments described in §200.2;

(ii) Regular assessments with accommodations;

(iii) Alternate assessments based on the grade-level academic achievement standards described in §200.1(c);

(iv) Alternate assessments based on the modified academic achievement standards described in §200.1(e); and

(v) Alternate assessments based on the alternate academic achievement standards described in §200.1(d).

(b) *Limited English proficient students.* A State must include limited English proficient students in its academic assessment system as follows:

(1) *In general.* (i) Consistent with paragraphs (b)(2) and (b)(4) of this section, the State must assess limited English proficient students in a valid and reliable manner that includes—

(A) Reasonable accommodations; and

(B) To the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English until the students have achieved English language proficiency.

(ii) In its State plan, the State must—

(A) Identify the languages other than English that are present in the student population served by the SEA; and

(B) Indicate the languages for which yearly student academic assessments are not available and are needed.

(iii) The State—

(A) Must make every effort to develop such assessments; and

(B) May request assistance from the Secretary in identifying linguistically accessible academic assessments that are needed.

(2) *Assessing reading/language arts in English.* (i) Unless an extension of time is warranted under paragraph (b)(2)(ii) of this section, a State must assess, using assessments written in English, the achievement of any limited English proficient student in meeting the State's reading/language arts academic standards if the student has attended schools in the United States, excluding Puerto Rico, for three or more consecutive years.

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

(iii) The requirements in paragraph (b)(2)(i) and (ii) of this section do not permit an exemption from participating in the State assessment system for limited English proficient students.

(3) *Assessing English proficiency.* (i) Unless a State receives an extension under paragraph (b)(3)(ii) of this section, the State must require each LEA, beginning no later than the 2002-2003 school year, to assess annually the English proficiency, including reading, writing, speaking, and listening skills, of all students with limited English proficiency in schools in the LEA.

(ii) The Secretary may extend, for one additional year, the deadline in paragraph (b)(3)(i) of this section if the State demonstrates that—

(A) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(1) A natural disaster; or

(2) A precipitous and unforeseen decline in the financial resources of the State; and

(B) The State can complete implementation within the additional one-year period.

(4) *Recently arrived limited English proficient students.* (i)(A) A State may exempt a recently arrived limited English proficient student, as defined in paragraph (b)(4)(iv) of this section, from one administration of the State's

§ 200.7

reading/language arts assessment under § 200.2.

(B) If the State does not assess a recently arrived limited English proficient student on the State's reading/language arts assessment, the State must count the year in which the assessment would have been administered as the first of the three years in which the student may take the State's reading/language arts assessment in a native language under section 1111(b)(3)(C)(x) of the Act.

(C) The State and its LEAs must report on State and district report cards under section 1111(h) of the Act the number of recently arrived limited English proficient students who are not assessed on the State's reading/language arts assessment.

(D) Nothing in paragraph (b)(4) of this section relieves an LEA from its responsibility under applicable law to provide recently arrived limited English proficient students with appropriate instruction to assist them in gaining English language proficiency as well as content knowledge in reading/language arts and mathematics.

(i) A State must assess the English language proficiency of a recently arrived limited English proficient student pursuant to paragraph (b)(3) of this section.

(iii) A State must assess the mathematics achievement of a recently arrived limited English proficient student pursuant to § 200.2.

(iv) A recently arrived limited English proficient student is a student with limited English proficiency who has attended schools in the United States for less than twelve months. The phrase "schools in the United States" includes only schools in the 50 States and the District of Columbia.

(c) *Migratory and other mobile students.* A State must include migratory students, as defined in Title I, part C, of the Act, and other mobile students in its academic assessment system, even if those students are not included for accountability purposes under section 1111(b)(3)(C)(xi) of the Act.

(d) *Students experiencing homelessness.* (1) A State must include homeless students, as defined in section 725(2) of Title VII, Subtitle B of the McKinney-Vento Act, in its academic assessment,

34 CFR Ch. II (7–1–08 Edition)

reporting, and accountability systems, consistent with section 1111(b)(3)(C)(xi) of the Act.

(2) The State is not required to disaggregate, as a separate category under § 200.2(b)(10), the assessment results of the students referred to in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 6311(b)(3))

(Approved by the Office of Management and Budget under control number 1810–0576)

[67 FR 45041, July 5, 2002, as amended at 67 FR 71715, Dec. 2, 2002; 68 FR 68702, Dec. 9, 2003; 71 FR 54193, Sept. 13, 2006; 72 FR 17779, Apr. 9, 2007]

§ 200.7 Disaggregation of data.

(a) *Statistically reliable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act or to identify schools in need of improvement, corrective action, or restructuring under section 1116 of the Act if the number of students in those subgroups is insufficient to yield statistically reliable information.

(2)(i) Based on sound statistical methodology, a State must determine and justify in its State plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.

(ii) Beginning with AYP decisions that are based on the assessments administered in the 2007–08 school year, a State may not establish a different minimum number of students under paragraph (a)(2)(i) of this section for separate subgroups under § 200.13(b)(7)(ii) or for the school as a whole.

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student.

(2) To determine whether disaggregated results would reveal personally identifiable information about an individual student, a State must apply the requirements under section