

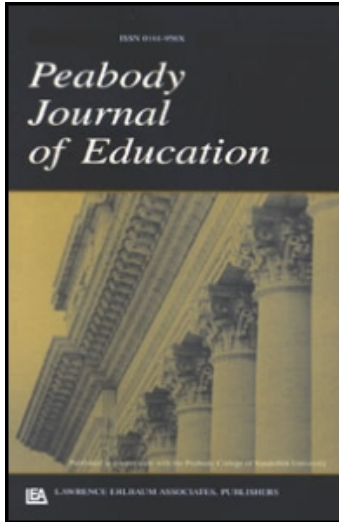
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The “Two Percent Students”: Considerations and Consequences of Eligibility Decisions

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Since the 2001–02 school year, the accountability provisions of the No Child Left Behind Act (NCLB) have shaped much of the work of public school teachers and administrators in the United States. NCLB explicitly prohibits schools from excluding students with disabilities from the accountability system and requires not only participation of *all* students in statewide accountability assessments but also reporting of the results for students with disabilities along with other students and as a disaggregated group. From the beginning of these requirements, lawmakers recognized that there would be a small group of students with disabilities for whom the regular assessment, even with accommodations, would not be appropriate and they authorized states to develop an alternate assessment based on alternate achievement standards (AA-AAS) for this group of students. More recently, responding to pressures from the field, additional flexibility has been granted to develop an additional alternate assessment based on modified grade-level achievement standards (AA-MAS) for students with disabilities who present with persistent academic difficulties. It is expected that approximately 2% of the total student population might be included in this new alternate assessment. This article examines the decisions that need to be made by individual states to determine the target population for this new alternate assessment and the policy implications of these decisions.

Since the 2001–02 school year, the accountability provisions of the No Child Left Behind Act (NCLB; 2001) have shaped much of the work of public school teachers and administrators in the United States. NCLB requires each state to develop content and achievement standards in several subjects, to administer tests to measure students’ progress toward these standards, to develop targets for performance on these tests, and to impose a series of sanctions on schools and districts that do not meet the targets. Together, the standards, assessments, and consequences constitute a standards-based accountability system. Many states had such a system in place before NCLB took effect, but since 2001–2002, every state in the United States has had to develop and implement a standards-based accountability system that meets the requirements of the law. This mandate has affected every public school student, every public school, and every district in the nation.

Standards-based reform is not new; it emerged in the early-to-middle 1990s as the primary vehicle for focusing schools on achievement and on setting high expectations for teachers and

students. In 1989, in response to the poor performance of U.S. students on international comparative assessments (McKnight et al., 1987; Travers & Westbury, 1989), the nation’s governors sounded the call for explicit world-class standards to guide educational practice. After much study and discussion (National Council on Education Standards and Testing, 1992), content standards became a formal requirement of the 1994 reauthorization of the 1965 Elementary and Secondary Education Act (Improving America’s Schools Act (IASA), 1994). The 1994 reauthorization required that by the 2000–01 school year, each state must have in place a statewide assessment system that would serve as the primary means for determining whether schools and districts receiving Title 1 funds were making adequate yearly progress toward educating all students to high standards (IASA, 1994).

Accountability for outcomes in education is also not new; it can be traced back more than a century to early pay-for-performance agreements in England (Kirst, 1990), although such arrangements are not part of most formal educational accountability systems today. Instead, outcomes-based accountability has taken a number of other forms in the United States, including minimum competency testing and high school exit examinations in the 1970s, and more recently, grade-level promotion tests. Yet the combination of the three elements—higher content standards, the use of assessments aimed at measuring how well schools are helping students meet the standards, and an emphasis on holding educators and students accountable for student achievement—into a single integrated system designed to improve school performance through sanctions and incentives is relatively new.

Standards-based accountability operates through a multilevel, multistep feedback mechanism. Content and performance standards that describe what students should know and should be able to do establish goals for the education system. Districts and schools are expected to use these goals to guide their choices of curriculum, professional development, and other school activities. Teachers use the standards as learning goals when they plan instruction. And in this way, the coordinated efforts of policymakers, administrators, and teachers promote students’ mastery of the desired content and skills. The standards also guide the development of system-wide student assessments, and student test scores on these assessments are used as an indicator of school success. Incentives are attached to school performance. Schools that do well are rewarded to reinforce good practice. Schools that do poorly are offered assistance and, ultimately, sanctioned so they will change practice and improve services to students. This feedback loop is intended to improve educational practices leading to improved student outcomes. Each state may choose different standards, different tests, different assistance policies, and different reward structures, but under NCLB, each state must develop some form of standards-based assessment system.

INCLUDING STUDENTS WITH DISABILITIES IN STATEWIDE ASSESSMENTS

An additional, but often overlooked, stipulation of the IASA was that each State ensures “participation in such assessments of *all* students” (IASA, 1994, §1111 (b)(3)(F)(i)). Historically, students with disabilities had been exempt from participation in school-level or district-level standardized testing requirements. On-grade-level performance was not expected of these students, and exclusion from the large-scale testing was viewed as humane, as well as convenient (Crawford, Almond, Tindal, & Hollenbeck, 2002; Thurlow, Seyfarth, Scott, & Ysseldyke, 1997;

Ysseldyke & Thurlow, 1994). (Rumors abounded that underachieving students were inflating the rolls of special education classes to mask the fact that certain groups of children were not learning.) Because the primary target of Elementary and Secondary Education Act regulation was the Title I program in a school or district, and accountability in federal law (PL 94–142 in 1975 and the Individuals with Disabilities Education Act [IDEA] of 1990) tended to focus on procedural compliance and not on achievement outcomes, little attention was actually paid to the IASA '94 requirement of full participation.

The situation changed in 1997. The reauthorization of IDEA was a first step in replacing the process orientation of the special education compliance monitoring system with a model that emphasized academic standards and results (IDEA, 1997). IDEA '97 again called for full participation of students with disabilities in statewide and district-wide assessment programs, through the use of reasonable adaptations and accommodations. The amendments asserted that the historical underachievement of students with disabilities was linked to low expectations for learning and scant access to the general education curriculum (Koenig & Bachman, 2004). In turn, mandating that students with disabilities participate in high-stakes accountability assessments would promote quality assurance in special education (Defur, 2002). The assumptions were that participation raises the stakes, in turn yielding higher expectations, leading to increased participation in general education, which promotes better teaching, and results in improved academic outcomes for students with disabilities (see Figure 1). This time, the special education community took notice and the general education community did as well when the assessment and accountability regulations in NCLB (2001) emerged as a logical extension of these IDEA '97 provisions. NCLB explicitly prohibited schools from excluding students with disabilities from the accountability system. NCLB restated the requirement for participation of *all* students in statewide accountability assessments and reporting of the results for students with disabilities with everyone else's and as a disaggregated group. Furthermore, students with disabilities were to be held responsible for the same academic content and performance standards as everyone else.

IDEA 2004, Section 612, Part B, reiterated the NCLB call for including all students with disabilities in statewide and district-wide assessment programs. It spoke clearly to the presumptions that tests would adhere to universal design principles to the extent feasible and that *most* students with disabilities would take the regular assessment with appropriate accommodations; Section 614, Part B, required Individualized Education Program (IEP) teams to stipulate “why a child *cannot* participate in the regular assessment” and not *whether* but *how* he or she would (IDEA 2004, §612 (b)). This orientation was consistent with the growing commitment in law and public policy to full inclusion of students with disabilities in general education classrooms and

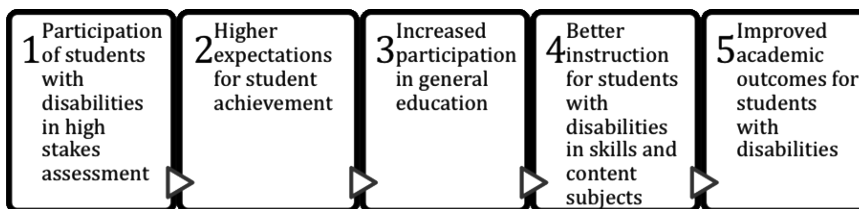


FIGURE 1 Assumptions underlying call for participation of students with disabilities in accountability assessments.

access of *all* students, even those with severe disabilities, to the general education curriculum. The orientation also made sense. By excluding no one from the accountability requirement, it would be possible to answer truthfully the fundamental accountability question: How well is each school doing in bringing *all* of its students up to standard? The inclusive orientation made the educational accomplishments of students with disabilities matter.

STATES' RESPONSES TO THE NEW ACCOUNTABILITY REQUIREMENTS

In response to the new mandates, unique statewide assessments were developed or adapted to measure how many and which students were attaining targeted knowledge and skills in reading and mathematics at certain benchmark grade levels. Further, these state assessments established a means of determining school building and school district accountability for each student's attainment of the specified standards. Fifty separate achievement standards were set for what constituted proficient academic performance at each of the targeted grade levels in each state to answer the accountability question, "By the end of Grade 3 (or 4, 5, 6, 7, 8, 9, 10 or 11) what percentage of students in this class (or grade, or school, or district, or state) meet or exceed the standard of proficiency?" The answer would be calculated by using the *total number* of 3rd graders (or 5th graders, or 8th graders, or 11th graders, etc.) as the denominator and the number who met or exceeded the proficient level on the state accountability assessment as the numerator. NCLB set very ambitious goals for schools: By 2014, *all* students (100%) were expected to meet or exceed proficiency levels. Further, NCLB prohibited schools from excluding students with disabilities from the accountability system. If the public was to know how well schools were educating *all* their students, they had to include *all* students in the denominator of calculation. That meant including students with disabilities. If those students were not in the denominator, the report of what percentage of students were meeting standards would be misleading. Furthermore, if they were not in the denominator, all the work of teachers of students with disabilities, and all the work of students with disabilities would not count. If these students were not in the count, teachers, administrators, school board members, taxpayers, and/or legislators might pay less attention to their academic achievement and invest less in improving it.

By requiring schools and states to aim high, lawmakers believed teachers and students (especially special education teachers and students with disabilities) would work harder to achieve the "impossible." As a consequence the academic progress of students with disabilities began receiving more attention and scrutiny than ever!

The 1% Solution

From the beginning of the requirement for students with disabilities to be included in state- and district-wide assessments, lawmakers recognized that there would be students for whom the regular assessment, even with accommodations, would not be appropriate. IDEA '97 stipulated that "students with disabilities will be included in state and district-wide assessment programs with appropriate accommodations, where necessary, *or in an alternate assessment for those who*

are not able to participate in the general assessment, even with accommodations [italics added]” (IDEA 1997, §612 (a); §300.138).

NCLB also permitted the development of an alternate assessment based on alternate achievement standards for a small population of students for whom the regular assessment, even with accommodations, was simply not appropriate. Alternate achievement standards would be aligned with a state’s academic content standards, would promote access to the general curriculum, and would reflect professional judgment of the highest achievement standards possible (see NCLB 2001, §200.1(d)). The alternate assessment based on alternate achievement standards would have to yield at least three classifications of students (proficient, basic, below basic) so that results from that assessment could be aggregated with the results from the regular assessment and *all* students would be included in the accountability reporting. Responsibility for whether students with an IEP participated in the accountability system by taking the regular assessment, the regular assessment with accommodations, or the alternate assessment based on alternate achievement standards was placed in the hands of the IEP team. No cap was placed on the number of students with significant cognitive disabilities in a district who could be assigned by the IEP teams to take the alternate assessment based on alternate achievement standards, although only 1% of students could be counted as proficient based on performance on the alternate.

Performance of Students With Disabilities Taking the Regular Assessment With and Without Accommodations

The reporting requirements of NCLB and IDEA 2004 require states to include the performance of students with disabilities in their annual reports of school, district, and state-level performance and to report separately the performance of students with disabilities as a disaggregated group. Over the years, participation rates of students with disabilities in the annual accountability assessments have increased steadily (see Thurlow, Altman, Cormier, & Moen, 2008), but performance levels have remained fairly static (Table 1). In the most recent summary of the performance of students with disabilities on state accountability assessments, Thurlow et al. reported that for those states for which rates of student proficiency could be calculated for the 2005–06 reading assessment,

TABLE 1
Median Rates of Proficient Performance for Students With Disabilities, Nationally, on State Assessments

Grade Level	Reading			Math		
	% Proficient in 2005–06 Median %	% Increase in Proficiency 2002 to 2005		% Proficient in 2005–06 Median %	% Increase in Proficiency 2002 to 2005	
		Median %	No. of States Reporting		Median %	No. of States Reporting
Elementary	44	+6	28	45	+10	28
Middle	33	+4	27	27	+4	27
High School	32	+3	24	25	+1	24

Note. Data source: Thurlow, Altman, Cormier, and Moen (2008).

slightly more than 30% of students on IEPs performed at a level considered proficient. Proficiency rates differed for students at the elementary (44% proficient nationwide), middle school (33%), and high school (32%) levels (see Thurlow et al., 2008). Between 2001–02 and 2004–05, median change for all states reporting reading scores at the elementary level was an increase of 6 percentage points across the 4-year span. For the 27 states reporting performance data for middle school reading, the median change in percentage proficient across the 4-year period was an increase of 4 percentage points. For the 24 states reporting performance data for high school reading, the median gain for all states across the 4-year span was 3 percentage points (see Thurlow et al., 2008).

The numbers for mathematics proficiency were virtually the same. For those states for which rates of student proficiency could be calculated for the 2005–06 math assessment, generally about 45% of elementary-level students, 27% of middle school students, and 25% of high school students with IEPs performed at a level considered proficient (see Thurlow et al., 2008).

Performance trend data were available for 28 states for elementary math. Between 2001–02 and 2004–05, the median change across those states was an increase of 10 percentage points. Data from 27 states for middle school math showed a median gain across the 4-year span of 4 percentage points. Data from 24 states for high school math also showed a median increase of only 1 percentage point for the 4-year period (see Thurlow et al., 2008).

The past several years of Pennsylvania data mirror the national trends. In 2005–06, students with disabilities constituted about 15% of the 3rd- through 8th- and 11th-grade population of Pennsylvania students participating in the spring statewide accountability assessment, the Pennsylvania System of School Assessment (PSSA). Overall, at each grade level, between 60% and 75% of students scored at the Proficient level, and about half of the nonproficient students performed in the Below Basic category. For students with IEPs, the range of proficiency went from a high of 40% at the 3rd grade to a low of 19% at the 11th grade, and about 70% of students who were not proficient performed in the Below Basic category (Table 2).

TABLE 2
Proficiency of Students on 2005–06 Reading Portion of the Pennsylvania Accountability Assessment, the Pennsylvania System of School Assessment

Grade	2005–06 All Students			2005–06 Students With Disabilities				
	No. Scored Reading	% Proficient+ Adv	% Basic	% Below Basic	No. Scored Reading	% Proficient+ Adv	% Basic	% Below Basic
3	124,662	69	15	16	17,484	36	18	46
4	127,680	68	17	15	19,664	34	29	44
5	131,488	61	18	21	20,920	24	19	58
6	135,914	66	18	16	20,913	25	24	50
7	141,012	68	17	15	21,170	26	25	49
8	143,401	71	13	16	21,370	27	19	54
11	132,434	65	16	18	16,549	19	19	62
Total	936,591	67	16	17	138,070	27	21	52

Note. Adv = advanced.

TABLE 3
Proficiency of Students on 2006–07 Reading Portion of the Pennsylvania Accountability Assessment, the Pennsylvania System of School Assessment

Grade	2006–07 All Students				2006–07 Students With Disabilities			
	No. Scored Reading	% Proficient+ Adv	% Basic	% Below Basic	No. Scored Reading	% Proficient+ Adv	% Basic	% Below Basic
3	125,344	73	12	15	18,041	40	17	43
4	125,981	70	15	15	19,691	35	20	45
5	129,593	60	20	20	20,586	23	21	56
6	133,399	64	20	17	20,782	23	24	53
7	138,610	67	17	16	21,231	23	24	53
8	141,193	75	13	12	21,611	33	23	44
11	135,364	65	15	19	17,479	19	17	64
Total	929,484	68	16	16	139,421	28	21	51

Note. Adv = advanced.

Tables 3 and 4 provide the same data for the two most recent administrations of the PSSA. In 2006–07, overall proficiency across the state in Grades 3 through 8 and 11 was about 67%, and half of the not-proficient students scored at the Below Basic level. Among students with IEPs, accounting for almost 15% of the populations of students participating in the spring assessment, only 28% achieved at the level of Proficient or above, and more than 70% of students who were not proficient performed at the Below Basic level (Table 3). In 2007–08, 31% of students with IEPs performed at the Proficient level or above on the reading portion of the PSSA and 70% of the students who were not proficient scored in the Below Basic range (Table 4). Proficiency (or lack thereof) was not limited to any one of the 13 disability categories eligible for special education and related services (Table 5), just as scoring at the Below Basic level was not limited to students with disabilities (Figure 2).

TABLE 4
Proficiency of Students on 2007–08 Reading Portion of the Pennsylvania Accountability Assessment, the Pennsylvania System of School Assessment

Grade	2007–08 All Students				2007–08 Students With Disabilities			
	Number Scored Reading	% Proficient+ Adv	% Basic	% Below Basic	Number Scored Reading	% Proficient+ Adv	% Basic	% Below Basic
3	126,402	77	11	12	19,062	45	17	39
4	126,266	70	16	14	20,264	36	23	42
5	127,189	62	20	19	20,506	25	21	55
6	130,692	67	18	15	20,589	27	24	49
7	135,641	70	16	14	21,056	27	25	48
8	138,339	78	10	12	21,480	37	19	44
11	134,984	65	16	19	18,101	19	19	62
Total	919,513	70	15	15	141,058	31	21	48

Note. Adv = advanced.

TABLE 5
 Percentage of Students by Disability Category not Proficient on the 2005–06 Reading Portion of the Pennsylvania Accountability Assessment, the Pennsylvania System of School Assessment (PSSA)

Disability Category	% not Proficient in 2006 PSSA Reading							Average
	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8	Grade 11	
Traumatic brain injury	69	78	56	69	78	73	75	71
Hearing impairment including deafness	63	53	72	56	59	60	63	61
Specific learning disability	77	77	83	79	76	73	82	78
Mental retardation	60	98	68	98	97	66	66	79
Orthopedic impairment	51	69	57	50	58	55	64	58
Emotional disturbance	77	70	79	75	71	72	75	74
Speech or language impairment	37	36	44	40	41	41	61	43
Visual impairment including blindness	54	49	49	42	53	49	49	49
Deaf/Blind	59	0	57	67	64	64	29	49
Multiple disabilities	79	78	81	82	77	77	79	79
Autism	56	59	64	61	59	59	60	60
Other health impairment	65	68	73	70	63	63	65	67
Total	64	66	76	75	74	73	81	73

Legitimate questions have been raised regarding the low proficiency rates of students with disabilities on the statewide assessments. Which facet of the law’s quality assurance equation (depicted in Figure 1) is erroneous? Were students not exposed to the general education curriculum covered on these assessments? Would substantially more students with disabilities have learned to standard if they had had proper access to the curriculum? Were students with disabilities being taught by teachers who were not highly qualified? Would more students with IEPs have been able

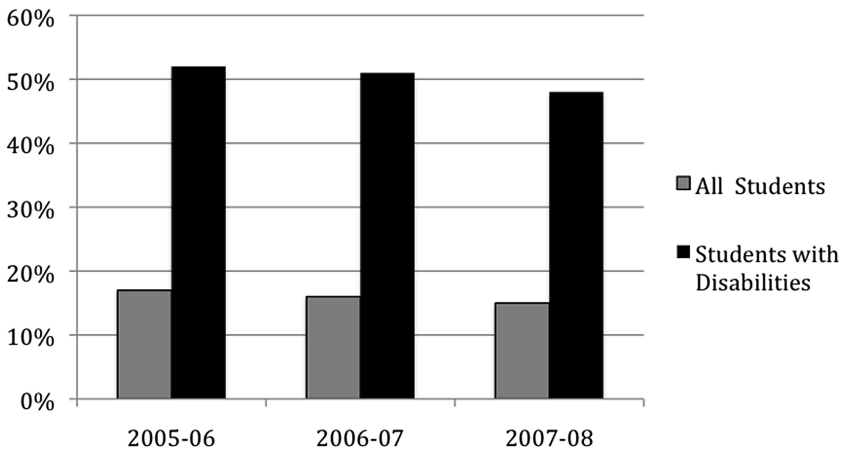


FIGURE 2 Percentage of all students and students with disabilities scoring Below Basic on the Pennsylvania System of School Assessment–Reading subtest in three consecutive years.

to perform at proficient level if taught by different teachers? Were students actually performing at proficient levels but their ability was misrepresented because the test was not constructed using appropriate Universal Design concepts and student performance was laden with construct irrelevant variance? Or were none of these the case? Maybe students with disabilities had been exposed to the appropriate grade-level curriculum, had been taught by highly qualified teachers, and had learned all they could in the time available—they just could not learn *everything* that needed to be learned within 1 school year to achieve proficiency.

The 2% Solution

Given the growing evidence of large numbers of students with disabilities unable to meet proficiency standards in every state across the nation, and the serious consequences for students in disaggregated groups not achieving the targets for Adequate Yearly Progress (AYP), there developed a groundswell of public concern for the “gap kids.” These students are not sufficiently cognitively impaired to qualify for an alternate assessment based on alternate achievement standards yet are not learning enough to reach proficiency on the standard assessment even with accommodations. In December 2005, the U.S. Department of Education responded to these pressures and concerns from the field and announced greater flexibility in the participation of students with disabilities in the statewide assessment and accountability systems. The flexibility would apply to “a group of students with disabilities who can make significant progress, but may not reach grade-level achievement standards within the same time frame as other students, even after receiving the best-designed instructional interventions from highly trained teachers” (Federal Register, Vol. 70, 2005, p. 74624). Similar to the flexibility afforded to states and school districts for students with the most significant cognitive disabilities (i.e., the 1% students), the proposed change would allow a state to use a “documented and validated standards-setting process to define *modified* [italics added] achievement standards for some students with disabilities” (Federal Register Vol. 70, 2005, p. 74625). Schools would still be required to assure that *all* students had access to grade-level curriculum, that instruction was aligned with the state’s academic content standards for the grade in which the student is enrolled, and that assignment to the new alternate assessment would not preclude a student from earning a regular high-school diploma (Federal Register, Vol. 70, 2005, p. 74625). Students eligible to take assessments based on modified achievement standards could come from any of the 13 disability categories listed in the IDEA, and IEP teams would review on an annual basis their decision to assign a student to an assessment based on modified achievement standards to ensure that the decision remains appropriate (Federal Register, Vol. 70, 2005, p. 74625).

The December 2005 change in policy was intended to address the problems of the “gap” students, students for whom the “grade level assessment is too difficult, and therefore does not provide data about the student’s abilities or information that would be helpful in guiding instruction” and for whom the

alternate assessment based on alternate achievement standards is too easy, . . . not intended to assess a student’s achievement across the full range of grade level content, . . . [and] would not provide teachers and parents with information to help these students progress towards grade level achievement. (U.S. Department of Education, 2007, p. 8)

But the announcement left it to the individual states to define the target population within specified parameters. First, the new flexibility should help students with persistent academic disabilities and served under IDEA who, because of their disability, may not be able to achieve grade-level proficiency within the same time frame as other students, even after receiving the best-designed instructional interventions, including special education and related services, designed to address the student’s individual needs from highly trained teachers. This parameter reflected the overwhelming federal commitment to assessing *all* students on *grade-level* content and to ensuring that *all* students are working toward mastering grade-level content. Second, the proposed flexibility would require that modified achievement standards be aligned with grade-level content but reflect reduced breadth or depth of that grade-level content so that a small group of students with disabilities would be better able to demonstrate what they know and can do on a state test. Third, the new provision would not limit how many students could be assessed against modified achievement standards and left the decision about which students should take such an assessment in the hands of the IEP team. Furthermore, states could include proficient scores from such assessments in making AYP decisions, with the proviso that such scores be capped at 2% of the total tested population.¹ Like the regulation for students with the most significant cognitive disabilities, the new flexibility was tailored to the needs of particular students, while ensuring the goals of NCLB were still achieved.

In justifying the flexibility, Secretary Spellings’s press release proclaimed that “the latest scientific research shows that students with disabilities . . . can make progress toward grade-level standards when they receive high-quality instruction and are assessed with alternate assessments” (U.S. Department of Education, 2005a). An accompanying fact sheet (Ed.gov, 2005) advised that “about 2% of children . . . are not able to reach grade-level standards, even with the best instruction” and refer the reader to

a review by [Lyon, Fletcher, Fuchs, & Chabra, 2007] indicating that “the best-designed instructional interventions achieved a range of success from a low of 50% to a high of 90% of participating students reaching grade-level reading standards. Those students who did not respond well to these interventions (approximately 10–50%) are . . . 0.5% to 3% of the total population.”

The same fact sheet (U.S. Department of Education, 2005b) went on to cite the following research to justify the 2% figure: A study by Torgeson et al. (1999) in which

most of the struggling students who received explicit reading instruction attained average levels of reading achievement, but 24% of these students did not reach grade level standards. Extrapolated to the population at large, that 24% of low responders reflects about 2.4% of the total student population who were unable to attain grade-level reading achievement (Ed.gov, 2005).

¹“Under specific limited conditions, States and [local educational agencies, or] LEAs, may exceed the 2.0% cap. The 2.0 percent cap may be exceeded only if a State or LEA is below the 1.0 percent cap for students with the most significant cognitive disabilities who take alternate assessments based on alternate academic achievement standards. For example, if the number of proficient and advanced scores on the alternate assessment based on alternate academic achievement standards is 0.8 percent, the State or LEA could include 2.2 percent of the proficient and advanced scores on alternate assessments based on modified academic achievement standards in calculating AYP” (U.S. Department of Education, 2007, p. 34).

And layered intervention studies by Mathes et al. (2005) and McMaster, Fuchs, Fuchs, and Compton (2005) in which the intervention did “not work adequately with 10% of the bottom 20% of the population yield[ing] an inadequate response rate of 2%” (Ed.gov, 2005). Thus, the fact sheet concluded, 2% of students assessed in the annual accountability assessment, or approximately 20% of students with disabilities, was a reasonable and sufficient cap for the new flexibility.

The same press release (U.S. Department of Education, 2005a) and fact sheet (Ed.gov, 2005) referenced (and then ignored) remedial reading research studies of students with reading difficulties in which nearly 80% of the research samples failed to achieve at grade level at the end of the treatment; that extrapolates to 16% of the school population, not 2% of the school population (Foorman et al., 1997; Klingner, Vaughn, Hughes, Schumm, & Elbaum, 1998). Nevertheless, the new policy was promoted to allow those students with persistent academic disabilities to take an assessment that is sensitive to measuring progress in their learning and that recognizes their individual needs, although they capped the number of scores that could be counted as proficient based on modified achievement standards at 2%.

With this limited guidance, states were permitted to develop modified achievement standards and provide alternate assessments for their target group of students with disabilities. It was left to the individual states to define more clearly who the target population was, and to develop guidelines to aid IEP teams in making the decision of which students with disabilities would take which version of the annual statewide accountability assessment—the regular assessment with or without accommodation, the alternate assessment with performance judged against modified grade-level achievement standards, or the alternate assessment with performance judged against alternate grade-level achievement standards.

WHO ARE (OR SHOULD BE) THE 2% STUDENTS?

The U.S. Department of Education spokespersons admitted that IEP teams would likely find it “more difficult . . . to identify students eligible for an alternate assessment based on modified achievement standards than . . . for an alternate assessment based on alternate achievement standards” (Federal Register, Vol. 70, 2005, p. 74626). They suggested that students in the “2% group” would not necessarily be the lowest achieving 2% of students, nor would the “2% students” be all students with IEPs who are having difficulty with grade-level content or who are receiving instruction below grade level. They challenged each state to design criteria to help IEP teams

distinguish between students whose disability has truly precluded them from achieving grade-level proficiency and those who, with appropriate services and interventions, including special education and related services designed to address the student’s individual needs, can be assessed based on grade-level achievement standards. (Federal Register, Vol. 70, 2005, p. 74626)

To assist in the discussion of the choices that need to be made, Figure 3 is presented as a graphic representation of the distribution of scores of students with disabilities on statewide assessments. Using the 2008 Pennsylvania figures presented in Table 4, and rounded off for simplicity, Figure 3 shows 30% of students with disabilities scoring Proficient (25%) or Advanced (5%), and 70% of students with disabilities scoring below proficiency (students A–N), some nearly proficient (represented by students C and A) and some far below proficiency (represented by students J, L,

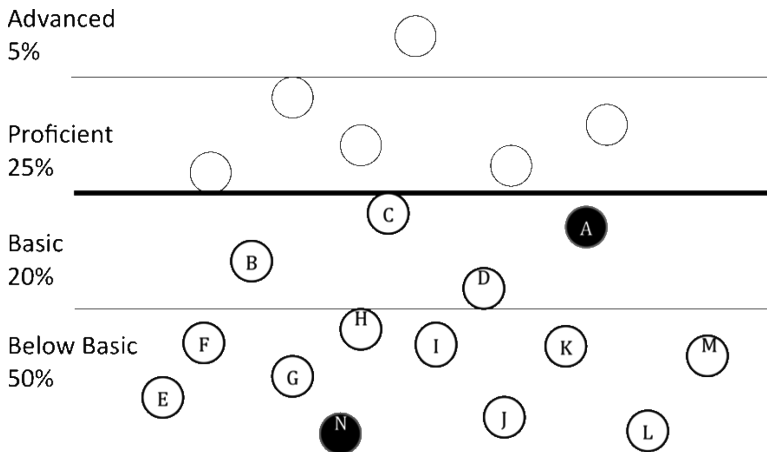


FIGURE 3 Hypothetical distribution of students with disabilities on statewide assessment.

and N). In this graphic, each circle represents 5% of students with disabilities taking the regular grade-level statewide accountability assessment, with or without appropriate accommodations.

The special education students who are likely to be identified to take an alternate assessment based on modified achievement standards may come from any of the 13 disability categories defined in IDEA (1990)(§200.1(f)(1)(11)). “The students who participate in assessments under this option are not limited to those who are close to achieving grade level (*represented by student A in the graphic above*) or who are relatively far from achieving at grade level (*represented by student N in the graphic above*)” [(material in italics added)] (Federal Register Vol. 72, 2007, p. 17749).

Choosing the “Almost Proficient”

Much of what has been written about the target population for this assessment option (see Lazarus, Thurlow, Christensen, & Cormier, 2007; Quenemoen, 2008) makes it appear as if the new alternate assessment based on modified achievement standards is intended for the students represented by Circle A. These are students whose progress to date, in response to appropriate instruction (including special education and related services) in the grade-level curriculum, shows that they have learned *some* grade-level content but have been unable to achieve grade-level proficiency within the year covered by their IEP (described in Sec.200.1(e)(2)(ii)(A)). One school year would appear to be not enough time in which to master grade-level content. For example, these students might need more than 1 year in which to learn the fourth-grade math curriculum, but given some extra time, they might actually demonstrate proficiency in fourth-grade mathematics. Currently at the end of fourth grade, these students must take the statewide accountability assessment covering *all* of fourth-grade content, and although they have mastered some of it, they cannot perform well enough to earn a proficiency rating. The next year, they move on to the fifth-grade curriculum and take the fifth-grade accountability assessment. Again, they are highly unlikely to

score at a proficient level on the fifth-grade test because they would need to learn all of the rest of fourth-grade curriculum and all of fifth-grade curriculum in that fifth-grade year and they are unlikely to do so.

Hypothetically, one could imagine giving these fourth-grade students longer than 1 year in which to become proficient on fourth-grade level standards. In fact, by high school, these are the very struggling students for whom districts design elongated English, math, or science courses. An algebra course that is usually completed in 1 school year is elongated into a 2-year course so that students have more time for explicit instruction and practice before taking the end-of-course exam (see Aguilar, Morocco, Parker, & Zigmond, 2006; Brigham, Parker, Morocco, & Zigmond, 2006; Morocco, Clay, Parker, & Zigmond, 2006). In our fourth-grade example just given, at the end of the 1st year in fourth grade, the students might take an alternate fourth-grade assessment based on modified fourth-grade level achievement standards so that the substantial progress they have made in the fourth-grade level curriculum could be acknowledged and counted. But instead of moving on to fifth grade, these students would continue learning the fourth-grade level academic content, then take the regular fourth-grade level assessment at the end of the year. In this second year, proficiency would be judged against the regular fourth-grade performance level descriptions. This could be a sensible idea. After all, in a standards-based educational environment the standards are supposed to be fixed, but the students given a longer or shorter time to learn what they need to achieve proficiency (Educational Broadcasting Corporation, 2004). In a standards-based system, students usually can't progress past some benchmark points (often at Grades 4, 8, and 12) without demonstrating the knowledge and skills written in the standards documents. But in practice, students with persistent academic problems could need to spend 2 years in each grade to have enough time to master the general education curriculum and "pass" the state test. That turns this into an absurd idea, expensive not only in students' time (adding at least 5 years to K-12 schooling) but also in terms of a district's dollar costs (increasing grade level enrollments without increasing the tax base).

If the alternate assessment based on modified achievement standards is aimed at the students represented by Circle A in Figure 1, and those students don't spend 2 years in each grade, it is hard to imagine why the IEP team would be required to make the participation decision annually. If a student cannot learn enough in 1 year to demonstrate proficiency on the fourth-grade academic content standards, it is hard to imagine how in the next academic year, he or she could learn the rest of the fourth-grade curriculum and all of the fifth-grade curriculum. Surely at the end of the fifth grade, this student would again take the assessment based on modified achievement standards. In other words, once placed in this new assessment option, the IEP team would be unlikely to return the student to the standard assessment. This could lead to a kind of "educational tracking" for the students represented by Circle A, an undesirable outcome on its own (Oakes, Wells, Jones, & Datnow, 1997; Wheelock, 1992), but also in direct conflict with the goals of inclusion—in the traditional sense of students sitting with peers.

Of course, students with disabilities are not the only ones scoring below proficiency on the state assessment (see Tables 2, 3, & 4). But the 2% option is not available for students without IEPs, so the slower track, less demanding curriculum could be available to other students but not the possibility of being called proficient based on modified achievement standards. Also, it is hard to imagine how one could target the students represented by Circle A and not extend the option to all the students with IEPs who scored even lower than those students (represented by Circles B–N). It would be difficult to explain to an IEP team, or to the parents of a student with

disabilities struggling with academic achievement, that students who have almost mastered the general education curriculum would be allowed to take an “easier” test (easier in the sense that the student does not have to know quite as much to be judged proficient on the subject matter) while students who are unable to master the general curriculum at all must still take the “harder” version of the statewide assessment. Because there is no cap on the number of students who may take the alternate assessment based on modified achievement standards, it is likely that as many as 60% to 70% of students with disabilities (with proportions of students likely increasing as grade levels increase) would be assigned to the new 2% assessment. This would make “tracking” an even more likely and an undesirable outcome of this new option. The 2% assessment would become the “special education assessment” instead and all the work in fashioning higher expectations for students with disabilities would be undermined.

Finally, we have seen significant improvement in the academic attainment of students with disabilities in the last decade. The feedback loop appears to be working. As more and more students with disabilities participate in the statewide assessment each year and everyone works harder and harder to help them reach grade-level standards, more and more students experience academic growth (Table 1). That means that the students who are currently almost proficient (Circle A) might soon become proficient with even greater effort, improved instruction, and explicit intervention. Assigning these students to the modified assessment would allow teachers to give up on the goal of reaching those higher expectations, rather than to try harder to teach them—a situation not to be encouraged.

Choosing the “Nowhere Near Proficient”

The alternative is to target the new assessment flexibility to students represented by Circle N in Figure 3. These are students whose current scores on the statewide assessment are the farthest from being proficient. These are students with significant difficulties in learning the general education curriculum at their grade level. Before this new assessment was made available, these students could be assigned to take either the grade-level assessment or an alternate assessment based on alternate achievement standards. Neither option provides an accurate assessment of what these students know and can do. Academic achievement growth trajectories suggest that students represented by Circle N are extremely unlikely to become proficient in subsequent years. These are students who can learn some grade-level content, information, and facts but who are very poor readers and/or very poor at math. These are students who might be able to participate in science, social studies, and literature discussions but who cannot read the textbooks or trade books, cannot cover as much content as other students, cannot cover the content to the same depth, and cannot learn the content to the same degree of cognitive complexity.

Aiming an alternate assessment based on modified grade-level achievement standards in reading and/or mathematics at this group (represented in Figure 3 by Circle N) avoids some of the undesirable consequences of targeting their higher performing peers (Circle A) discussed earlier. Focusing on the lowest performing students directs IEP teams to consider a smaller number of students for the new option. It changes academic achievement expectations only for a small group of students with disabilities instead of creating a special education “track” for all nonproficient students with disabilities. It gives these very, very hard to teach students credit for the extraordinary effort it will take to achieve any grade-level competence.

But several problems remain. First, can we reasonably and responsibly call their achievements “proficient on grade level content” when students have mastered fewer skills and less sophisticated concepts in a narrowed curriculum? Is it fair to the students represented by Circle A, their parents, and their teachers to change the definition of proficiency and “pretend” the students represented by Circle N are proficient on grade level work? Who benefits from this charade? Second, what will be the cumulative effects of redefining proficiency standards grade after grade? If the modified achievement standards say that third-grade students need master only some multiplication concepts but not others, think about the implications on successfully applying division concepts in fifth-grade or algebraic concepts in eighth grade and so on. Third, how will teachers and schools balance their commitment to inclusion with a classroom reality in which some students are not required to learn what the teacher is teaching or the teacher is moving too quickly through material they need to master? Developing modified standards for some students will require eliminating some skills and extending the coverage time for others because the students cannot learn the entire curriculum in 1 year’s time. How will the 2% students and their parents, their classmates and their classmates’ parents, the remaining students with disabilities struggling on the regular statewide assessment and their parents, as well as the general public react when Johnny, a student represented by Circle N, is called “proficient” based on modified achievement standards, whereas his classmate George, represented by any of the Circles A through M, is called “not proficient” on the statewide test?

CONCLUDING COMMENTS

The new assessment flexibility assumes the appropriateness of allowing an additional small percentage of students with disabilities (beyond students with significant cognitive disabilities) to be assessed based on modified academic achievement standards aligned with the state’s grade-level academic content standards. It allows the performance of this small percentage of students to be judged as “proficient” even if the breadth or depth of those grade-level standards is reduced or the format or design of the grade-level assessment is different. It also allows the target population for this flexibility to be defined at the state level, by bureaucrats and testing companies instead of special education leaders and researchers. The nonregulatory guidance to IEP teams is confusing. The regulations (§200.1(e)(2)(ii)(A)) already stipulate that a student should not be assigned to an alternate assessment based on modified achievement standards if the child’s IEP is not of “high quality” and “specially designed to . . . move [the] child closer to grade-level achievement, if the child is not already achieving at grade level.” Does that mean a struggling student with a poorly written IEP will be precluded from taking the new alternate assessment for at least a year during which time the IEP team writes a better IEP?

Further, Section 200.1(e)(2)(ii)(A) stipulates that students should not be assigned to an alternate assessment based on modified achievement standards if they have not had the opportunity to learn grade-level content. Does that mean that a struggling student being taught reading or mathematics at his/her instructional level rather than at “grade-level” would be precluded from taking the new alternate assessment for at least a year during which time he is provided less appropriate and ‘special’ grade level instruction instead? Section 200.1(e)(2)(ii)(B) requires IEP teams to examine a student’s progress in response to high-quality instruction over time and using multiple measures before assigning that student to an alternate assessment based on modified

achievement standards. Does that mean that a struggling student whose teacher delivers “less than high-quality instruction” would be precluded from assignment to the new assessment until she or he gets a better teacher? And how should measuring student progress be standardized? Given the pressures of accountability and the time and effort devoted to preparing for and administering state tests, many schools have stopped administering additional standardized achievement tests. And, although Response to Intervention and Reading First have promoted increased use of curriculum-based-measurement and progress monitoring in reading and math, these models are often restricted to the elementary level. In fact, the field is only beginning to scratch the surface in developing and implementing comprehensive progress monitoring/intervention frameworks for middle and secondary students—the primary cohort for accountability testing (Mastropieri & Scruggs, 2005; Vaughn et al., 2008). How will IEP teams determine how much progress is sufficient? And for how long should an IEP team wait for signs of progress before recommending the student for the new alternate?

It is too soon in the implementation of the new flexibility to paint a broad picture of how states are responding to the challenge of defining who the 2% students are. To date only five states have undergone peer review of their documentation related to this new assessment option (see Filbin, 2008). The National Center on Educational Outcomes (Lazarus et. al, 2007) summarized the eligibility criteria used by these states to define which students with IEPs would participate in the new test. All states required that students have an IEP to be eligible. Exclusionary criteria paralleled those detailed in the federal regulations (i.e., participation is not based on a disability label, students do not have a significant cognitive disability, etc.). Inclusionary criteria for four states required that students’ performance be multiple years behind grade-level expectations. In fact, one state required that students function at least 3 years below grade level. Three states required that students’ instruction be significantly changed in scope, breadth, or complexity relative to the grade-level standards. Four states required that students have had intensive individualized instruction and support, whereas two specifically state that students must have received at least 3 years of intensive individualized instruction in reading and/or math. Even such a brief snapshot of these states’ efforts to define the 2% population underscores the aforementioned considerations about possible unintended consequences of defining participation on inclusive education, curriculum design, cumulative learning, and long-term school experience.

It is also too soon to determine whether clear enough guidelines can be developed for IEP teams to help them make the subtle distinctions between students eligible for the alternate assessment based on alternate achievement standards, alternate assessment based on modified achievement standards, and regular assessment with appropriate accommodation. It is too soon to know which states will go in which direction and what impact this diverse implementation will have on the special education field. It is too soon to know how many students will be assigned to this option. If only a small percentage of students are assigned to the new assessment option, how will schools address the underachievement of the majority of students with IEPs not eligible to be called proficient by either alternate assessment option? And if a large number of students are assigned to the new assessment option, how will schools and IEP teams respond when the percent of students with disabilities reported as proficient stabilizes because the 2% quota is exceeded?

During the past 2 decades, considerable effort has been exerted at both federal and state levels on reforms designed to ensure that all of America’s students are prepared for work in an increasingly competitive global society. The emphasis nationwide has been on improving results of educational efforts by specifying desired achievements for students and developing systems

of accountability to evaluate the attainment of those desired achievements. We have seen many positive outcomes from the requirement to include students with disabilities in this standards-based reform movement and in the assessment and accountability provisions of NCLB. The policies related to students with disabilities in NCLB have made more visible and concrete our nation's commitment to the inclusion of students with disabilities in the mainstream of education, to their exposure to and mastery of the general education curriculum, and to the desirability of setting higher and higher expectations for their educational attainments. The jury is still out, however, on whether this new assessment flexibility and the uncertainty about who it is for will help or hinder progress of students with disabilities in attaining high levels of academic achievement.

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