

CLE Comments on Provisions Regarding Use of Modified Achievement Standards Included in House NCLB Discussion Draft

Strike SEC. 1111 (b)(1)(H) - Modified Academic Achievement Standards [26]

Rationale: Reliable data does not support establishing modified academic achievement standards for an additional 2% of students (approximately 20% of students with disabilities receiving special education) and the use of those standards for making adequate yearly progress decisions (as authorized by regulations 34 CFR Part 200 published in the Federal Register on April 9, 2007).

Strike: SEC. 1111 (b)(2)(R)(1)(i) – (ix) - Academic Standards, Academic Assessments, and Accountability; Adequate Yearly Progress: Students with Disabilities — [54-55]

Strike: SEC. 1111(b)(3)(E)(ii)(I)-(VI) [74]

Rationale: Research based on valid and reliable data does not support codification of the 2% regulation which as drafted would allow 2%-3% of students assessed (as much as 30% of students with disabilities) to be assessed using an alternate assessment based on modified academic achievement standards. Consequently there is no justification to support the process of allowing LEAs to request an increase in the use of modified academic achievement scores (potentially more than 3%). Allowing IEP Teams to choose arbitrarily which students fall under a vague categorization of those whom they are reasonably certain will be unable to achieve grade-level proficiency opens up the system to abuse and would violate Section 504 because most of these students will not be taught the same skills and bodies of knowledge expected for all students at the levels of achievement standards expected for all students. Moreover, the use of such modified standards sets up the conditions for turning NCLB on its head. For all other students, the core structure of NCLB creates a presumption that students not achieving proficient or advanced performance in relation to the full range of state standards indicates that the quality of their instruction needs to be improved in order to get them to proficient or advanced performance in relation to the full range of state standards. For the students at issue here, that presumption becomes non-operative.

The DRAFT inaccurately states that current regulation allows SEAs to request an increase beyond the total of 3 percent of all students assessed (§200.13(c)(4). As stated: “A State may not request from the Secretary an exception permitting it to exceed the caps on proficient and advanced scores based on alternate or modified academic achievement standards under paragraph (c)(2) of this section.”

Strike SEC. 1111(b)(3)(D) (xi)(V) [69]

Rationale: This provision, which presumably refers to both valid (i.e., standard) and non-standard accommodations, should be deleted since it is inconsistent with SEC. 1111(b)(3)(D)(xi)(IV)(dd). The latter specifies that, for non-standard accommodations, evidence must be presented to prove that the accommodation invalidates the targeted skill being assessed. The language in SEC. 1111(b)(3)(D)(xi)(V) is also redundant with respect to SEC. 1111(b)(3)(D)(xi)(IV)(bb) and (cc).