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Including Students with Disabilities in Assessments: Valid Assessments, Reasonable Accommodations, and Multiple Measures

The importance of including all eligible students receiving special education under the Individuals with Disabilities Education Act (IDEA) in the State's assessment system required by Title I/No Child Left Behind Act cannot be overstated. Assessing performance based on subgroup population allows for heightened accountability to the students within the particular subgroups (race, ethnicity, English language learners, low-income, disability) as well as to their parents. Information garnered from the data used to report adequate yearly progress (AYP) generally encourages access to early identification and intervention; access to research-based reading instruction prior to student referral for special education programming and services; increased efforts to teach reading and math to grade level through additional and more effective specialized instruction and related services; and recognition of the need to utilize other methods and strategies for providing specialized instruction, for example, using assistive technology services and devices that focus on aural and visual instruction, such as voice synthesizers, books on tape, Kurzweil readers, images, photographs, documentary, and theatrical presentations.

Students with disabilities, as all other students, have a right to participate effectively in the State accountability system, to be provided the opportunity to learn to meet the same grade level standards established for all students, and to be provided the opportunity to participate in statewide assessments, including alternate assessments based on grade level standards. It is essential that all students be able to demonstrate not only what they have learned and are able to do, but what they need to learn to attain the State's high academic content standards. Despite their legal right to participate fully in the state accountability system, students with disabilities, in particular, the large percentage of students with dyslexia and other print disabilities, are vulnerable to being inappropriately assessed, and thus, inappropriately educated, based on invalid State assessments that measure only reading or decoding skills.

As a matter of law and policy, the question must be asked, why students, in general, and students with reading or print disabilities, in particular, are often being assessed solely on "reading" skills rather than the broader academic content-based knowledge and skills within the English language arts curriculum aligned with their respective state's academic content standards? Regulations promulgated under Title I/NCLB by the U.S. Department of Education merely reiterate "reading or language arts" without addressing the broader legal issues of exclusion and discrimination that are raised by states and local school districts assessing students based on a limited skill that is, in fact, tied to a specific learning disability.

While a few states have assessments that differentiate the construct being measured (e.g., reading for grades 3–5 and English language arts not limited to "reading" or "decoding" skills for grades 6–12), many states assess all students, regardless of grade, based only on reading/decoding and comprehension based solely on reading/decoding (i.e., comprehension of decoded text). To the degree that states limit their assessments to "reading" instead of assessing students on the broader academic content standards comprising English language arts, those assessments deny students with dyslexia and other print disabilities from fully and fairly participating in their state assessment and state accountability system. This exclusion can be harmful to the extent that information based on state assessments is being used to make school/district-based decisions about curricula choices, teaching and instruction, or placements and programs (e.g., advanced placement classes, honors, college bound) for all students.

Moreover, inaccurate inferences may also be being drawn from individual test scores attained by students with language based learning disabilities, including dyslexia, on such assessments. Of particular concern is that IEP teams, on the basis of invalid test results based heavily on reading outcomes for students with print disabilities, select disproportionate numbers of these students to be assessed (and all too likely taught) based on modified achievement standards. While students assessed based on modified achievement standards are not precluded from attaining a regular high school diploma, their exposure by definition is limited to classes teaching higher order thinking skills and providing authentic learning opportunities. Similarly, IEP teams may be using student performance on reading assessments to identify students for assignment in non-diploma tracks.

Because many states assess students in “reading” and not the more encompassing and higher order skills separate from reading/decoding that fall within English language arts, students with print disabilities and language based learning disabilities, including dyslexia, routinely participate in state assessments without appropriate or reasonable accommodations authorized by IDEA or Section 504 of the Rehabilitation Act of 1973 (Section 504), respectively, because a “read aloud” accommodation, presumably, would invalidate the results of an assessment of “reading” and “reading comprehension.”¹ Other states allow students to receive a “read aloud” accommodation on the state assessment of “reading” irrespective of the effect of the modification on invalidating the construct being assessed, i.e., reading/decoding. Either way the student with disabilities loses and is cheated from the opportunity to participate in the state and district accountability system and to reap the instructional benefits of his/her non-disabled peers.

The dilemma of students with language-based learning disabilities or print disabilities is exacerbated by the U.S. Department of Education’s failure to provide a clear definition of the statutory mandate to use “multiple measures” to assess student proficiencies. NCLB explicitly requires that a state must establish a system of assessments that uses valid, reliable, multiple methods for measuring whether all students are reaching proficient and advanced levels of mastery of the state’s academic standards. 20 U.S.C. § 6311(b)(3)(C)(iii). Instead of helping to address some of the above described issues and concerns by ensuring that this statutory requirement is given meaning consistent with the purpose of NCLB and professionally recognized technical principles of testing and assessment, the Department through its recently promulgated regulations² not only obfuscates but eviscerates the meaning of “multiple measures.” Ignoring the Senate Report that described the use and purpose of “multiple measures” to “encourage states to move toward using new forms of assessments, such as performance based measures, for the purpose of determining adequate yearly progress and for assessing the performance of children served under Title I Part A,”³ The Department at 34 C.F.R. § 200.2(b)(7) only says that multiple measures “[m]ay include– (i) [s]ingle or multiple question formats that range in cognitive complexity within a single assessment; and (ii) [m]ultiple assessments within a subject area.” Indeed, by reiterating what was already recognized under NCLB and its regulations, the Department did greater harm to the extent that its failure to identify additional tools and strategies will be perceived as a rejection of such alternatives.⁴

The Department has ignored the prime reason for having multiple measures - to ensure validity and reliability of the judgments about proficiency⁵ by providing *multiple ways* for students to demonstrate proficiency in the *same* skills and knowledge. As discussed above, the failure to implement and enforce this requirement properly has seriously adverse consequences for students with disabilities, e.g., those with print disabilities, language based learning disabilities, including dyslexia, who are especially prone to being wrongly identified based on incorrect inferences drawn from invalid assessments that they are, in fact, unable to learn at the same level of difficulty and within the same timeframe as their peers without disabilities. To the extent that these individual students can demonstrate that their education and future livelihood have been harmed as a result of these practices, they have a basis for exploring the viability of claims of discrimination.⁶

The failure to differentiate between decoding skills and the broader comprehension of information and range of literary knowledge that are within the scope of the academic content standards embedded in a language arts curriculum denies the meaningful and effective participation of students with specific learning disabilities, who are otherwise unable to participate. Moreover, the failure to distinguish between decoding and broader comprehension is inconsistent with the requirements of NCLB, and constitutes discrimination under IDEA, Section 504 and the ADA. Furthermore, this failure to provide appropriate accommodations for those items, e.g., those on the “language arts” assessment, may likely lead the IEP team to use invalid test

¹ This would be inconsistent with 34 C.F.R. § 300.160(b)(2)(ii).

² 34 C.F.R. § 200.2(b)(7), 73 Fed. Reg. 64436 (October 29, 2008).

³ 103rd Congress, 2nd Session, S. Rep. No. 103-292 (Part I of 5) (June 24, 1994).

⁴ See Center for Law and Education, *Comments on Proposed Rule for Title I: 34 CFR Part 200, 73 Federal Register 22020* (April 23, 2008).

⁵ According to Standard 13.7 of the *Standards for Educational and Psychological Testing*, “...in elementary or secondary education, a decision or characterization that will have a major impact on a test taker should not automatically be made on the basis of a single test score. Other relevant information... should be taken into account if it will enhance the overall validity of the decision.” American Educational Research Association, American Psychological Association, and National Council on Measurement in Education (1999). *Standards for Educational and Psychological Testing* (p. 146). Washington, DC: American Psychological Association.

⁶ It is also possible that subgroup students other than those with disabilities would have similar legal claims for challenging their exclusion on the basis of inaccurate inferences being made based on the assessment.

results to make decisions to limit student participation to alternate assessments aligned with different and reduced standards of learning.

Recommendations:

- (1) Signal immediately that the incoming Administration intends to withdraw the faulty regulation at 34 C.F.R. § 200.2(b)(7) (effective 11/28/08) that undermines and makes meaningless the already long ignored statutory requirement to use “multiple measures” to assess student proficiencies.
- (2) Monitor and enforce the assessment requirements under IDEA to ensure that ALL states develop an alternate assessment based on regular grade level standards to ensure that all states are considering and recognizing the importance of “multiple measures” of assessment so as to enable all students, including those with disabilities, to participate meaningfully in the state accountability system.
- (3) Share with the public results of the U.S. Department of Education’s peer- review process concerning the evaluation of state assessments, in particular with respect to the use of reasonable and valid accommodations.
- (4) Develop guidance designed to assist states in developing and implementing assessment and accommodation policies that more accurately measure what students have learned and are able to do.
- (5) Monitor states to ensure that IEP teams are properly trained to identify and select reasonable accommodations that do not invalidate the construct being measured.