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MEMORANDUM

TO: District School Superintendents

FROM: Jim Warford

DATE: February 18, 2004

SUBJECT: Alternate Assessment for Students with Significant Cognitive Disabilities – “1% Rule”

The purpose of this memorandum is to provide you with information regarding the requirements for students with disabilities to participate in the statewide assessment program and on the U. S. Department of Education’s final regulations, pursuant to the No Child Left Behind Act of 2001, which address the use of alternate achievement standards and alternate assessments for students with significant cognitive disabilities.

The federal regulations promulgated to implement the “1 percent rule” were published in the December 9, 2003, Federal Register and were effective January 8, 2004. Regulation 34 CFR 200.6(a)(2)(iii)(A)(1)-(B) directs states to:

“(A)(1) Establish and ensure implementation of clear and appropriate guidelines for Individualized Educational Plan (IEP) teams to apply in determining when a child’s significant cognitive disability justifies assessment based on alternate academic achievement standards; and

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- (2) Ensure that parents of those students are informed that their child's achievement will be based on alternate achievement standards; and
- (B) Report separately... the number and percentage of students with disabilities taking-
- (1) Alternate assessments based on the alternate academic achievement standards defined under s. 200.1(d)."

Students with the most significant cognitive disabilities, to whom the final regulations apply, are considered to include a small number of students whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction. This population of students generally represents approximately 9% of students with disabilities in the grades assessed (Federal Register, Vol. 68, No. 236, December 9, 2003).

Rule 6A-1.0943, Florida Administrative Code (FAC), *Statewide Assessment for Students with Disabilities*, already establishes the requirements and process for determining whether a student with disabilities should participate in an alternate assessment. Specifically, Rule 6A-1.0943(1)(a)1-2, FAC, states:

- “(a) The decision to exclude any student with a disability, as defined in Section 228.041(18), Florida Statutes [Section 1003.01(3)(a), Florida Statutes] from statewide [the Florida Comprehensive Assessment Test] or district assessment programs is made by the Individual Educational Plan (IEP) team and recorded on the IEP. Students may be excluded from statewide or district assessment programs if the following criteria are met:
1. The student's cognitive ability prevents the student from completing required coursework and achieving the Sunshine State Standards...even with appropriate and allowable course modifications, and
 2. The student requires extensive direct instruction to accomplish the application and transfer of skills and competencies needed for domestic, community living, leisure, and vocational activities.”

To determine whether a student should not participate in the FCAT but participate in an alternate assessment, the IEP team should address the following questions:

1. Is the student unable to master the Sunshine State Standards, even with appropriate and allowable course accommodations?
2. Is the student's demonstrated cognitive ability the primary reason for the inability to master these standards?
3. Is the student participating in a modified or functional curriculum based upon competencies in the Sunshine State Standards for Special Diploma for all academic areas?
4. Does the student require extensive direct instruction in functional academics and vocational competencies as well as domestic, community living, and leisure activities?
5. Does the student have deficits in adaptive behavior, as demonstrated by the inability to function effectively and independently in everyday living skills (interpersonal and social interactions) across a variety of settings?

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If the IEP team cannot answer “yes” to all of the questions, the student should participate in the FCAT, with allowable accommodations, as appropriate. To assist you in making such a determination, enclosed is a checklist IEP teams can use to document their decision.

Federal regulation 34 CFR 200.12(c)(1)(ii) states:

“(c)(1) In calculating adequate yearly progress for schools, LEAs, and the State, a State-
(ii) May include the proficient and advanced scores of students with the most significant cognitive disabilities based on alternate achievement standards...[alternate assessment] provided that the number of those students who score at the proficient or advanced level on those alternate achievement standards at the LEA and State levels, separately, does not exceed 1.0 percent of all students in the grades assessed in reading/language arts and in mathematics.”

Federal regulation 34 CFR 200.13(c)(3) prescribes the limited conditions under which a state may grant an LEA a waiver from the one percent cap (e.g., a larger number of students with significant cognitive disabilities are provided services by a district, etc.).

To provide you with additional information, enclosed is a chart that summarizes by district the participation and proficiency rates for students with disabilities who were assessed on alternate standards in 2003.

To summarize the above:

- All students with disabilities must be assessed either through the FCAT or an alternate assessment.
- It is expected that the majority of students with disabilities participate in the FCAT.
- IEP teams must continue to make the appropriate determination of whether a student with disabilities should participate in the FCAT or an alternate assessment based on the requirements already defined in Rule 6A-1.0943, FAC. It is inappropriate for schools or IEP teams to make decisions regarding a student’s participation in the FCAT for any reason related to the school’s grade or determination of AYP.
- In some districts, the percent of students with disabilities who are proficient on alternate standards may exceed 1 percent of the total assessed population due to the large numbers of students with significant cognitive disabilities served by the district. In such cases, the district may apply to the state for a waiver.

We appreciate your support and continued efforts in providing services to students with disabilities.

Enclosures

cc: Principals
Exceptional Student Education Directors
ESE Alternate Assessment Coordinators
District Assessment Coordinators
District Accountability Contacts