

The Individuals with Disabilities Education Act Amendments of 1997:

Statutory and Regulatory Provisions Pertaining to Large-Scale Assessments and Students with Disabilities

The following table displays statutory and regulatory provisions of the Individuals with Disabilities Education Act (IDEA) that pertain to large-scale assessments and students with disabilities.

The column labeled "IDEA Statute" contains excerpts from the Individuals with Disabilities Education Act (IDEA) Amendments of 1997 (Public Law No.105-17), as enacted into law on June 4, 1997.

The column labeled "Regulations" contains excerpts from the final regulations for the Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities as published in the Federal Register on March 12, 1999. These regulations were needed to implement changes made by the IDEA Amendments of 1997.

The column labeled " Analysis of Comments and Changes " contains relevant excerpts from Analysis of Comments and Changes that was published with the final regulations on March 12, 1999. This analysis summarizes the public comments that were received on the Notice of Proposed Rulemaking (NPRM) that was published on October 22, 1997 and describes the changes made in the regulations since the publication of the NPRM. This column only contains excerpts directly relevant to large-scale assessment.

The table is divided into four sections based on topical divisions used in the NPRM:

- (1) Performance Goals and Indicators;
- (2) Participation in Assessments;
- (3) Reports Relating to Assessments; and
- (4) Individualized Education Program (IEP)

All information in the table is directly quoted from the stated sources, except for some explanatory comments that appear in square brackets []. Three dots ... indicate that material has been deleted.

This document was prepared for discussion purposes only. No guarantee is made concerning accuracy, and no ED endorsement should be inferred.

IDEA Statute	Regulations	Analysis of Comments and Changes
Performance Goals and Indicators		
<p>[Section 612(a) is amended to add the following requirements for state eligibility for assistance under Part B.]</p> <p>(16) PERFORMANCE GOALS AND INDICATORS- The State--</p> <p>(A) has established goals for the performance of children with disabilities in the State that--</p> <p>(I) will promote the purposes of this Act, as stated in section 601(d); and</p> <p>(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;</p> <p>(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;</p> <p>(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and</p> <p>(D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart.</p>	<p>§ 300.137 Performance goals and indicators.</p> <p>The State must have on file with the Secretary information to demonstrate that the State--</p> <p>(a) Has established goals for the performance of children with disabilities in the State that--</p> <p>(1) Will promote the purposes of this part, as stated in Sec. 300.1; and</p> <p>(2) Are consistent, to the maximum extent appropriate, with other goals and standards for all children established by the State;</p> <p>(b) Has established performance indicators that the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;</p> <p>(c) Every two years, will report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section; and</p> <p>(d) Based on its assessment of that progress, will revise its State improvement plan under subpart 1 of Part D of the Act as may be needed to improve its performance, if the State receives assistance under that subpart.</p> <p>(Authority: 20 U.S.C. 1412(a)(16))</p>	<p>[The analysis of comments and changes for section 137 does not present information directly pertaining to large-scale assessments.]</p>

IDEA Statute	Regulations	Analysis of Comments and Changes
Participation in Assessments		
<p>[Section 612(a) is amended to add the following requirements for state eligibility for assistance under Part B.]</p> <p>(17) PARTICIPATION IN ASSESSMENTS-</p> <p>(A) IN GENERAL- Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency--</p> <p>(I) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and</p> <p>(ii) develops and, beginning not later than July 1, 2000, conducts those alternate assessments.</p> <p>[This item is continued below in the section on "Reports Relating to Assessment".]</p>	<p>§ 300.138 Participation in assessments.</p> <p>The State must have on file with the Secretary information to demonstrate that--</p> <p>(a) Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary;</p> <p>(b) As appropriate, the State or LEA--</p> <p>(1) Develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs;</p> <p>(2) Develops alternate assessments in accordance with paragraph (b)(1) of this section; and</p> <p>(3) Beginning not later than, July 1, 2000, conducts the alternate assessments described in paragraph (b)(2) of this section.</p> <p>(Authority: 20 U.S.C. 1412(a)(17)(A))</p>	<p>Comment: A number of commenters raised concerns regarding the note following Sec. 300.138, which states that it is assumed that only a small percentage of children with disabilities will need alternative assessments; some commenters requested that the language of the note be incorporated into the regulation itself, while others requested that the note be deleted, and further commenters requested clarification regarding the meaning of 'small percentage' in the note and who would enforce that requirement.</p> <p>Other commenters asked that the regulation clarify that the IEP team must make the determination that a child will participate in an alternate assessment. Others asked that the regulation be revised to include criteria or guidelines in the regulation for determining if an alternate assessment can be used for a child, while others requested that the regulations require that each State provide such guidance for IEP teams. Some commenters said that the use of the term ``alternate assessment'' in the regulation and the use of the term ``alternative assessment'' in the note caused confusion, and asked that ``alternate assessment'' be defined. Other commenters stated that costs of alternate assessments would be prohibitive. Some commenters expressed concerns regarding the use of accommodations. Some commenters were concerned that the use of accommodations might affect test validity and standardization, while others requested further guidance as to who has the authority to determine whether a particular accommodation is necessary and how that determination must be made. Some of the commenters requested that the regulation specify that accommodations should address students' specific needs and afford maximum independence, while others said that a student's needs should be accommodated by tools or assistive technology that he or she uses on a daily basis or with which he or she is most familiar.</p> <p>Other commenters asked that a note be added to reaffirm the State's responsibility to ensure that children are provided the accommodations they need so that they can participate in State and district-wide assessments. Some commenters requested clarification as to whether students should participate in assessments according to their performance level or the grade they are in based upon their chronological age. Some commenters requested clarification as to whether participation in alternate assessments was not required until July 1, 2000. A few commenters requested a note to state that assessment practices appropriate for children in grades 4 and older might not be appropriate for younger children.</p> <p>Discussion: State and district-wide assessment programs are closely aligned with State and local accountability-based reform and restructuring initiatives. Therefore, it is important to allow the flexibility needed for State and local school districts to appropriately include disabled children in State and district-wide assessment programs. Only minimum requirements are included in these regulations for how public agencies provide for the participation of children with disabilities in State and district-wide assessments. The Department will be working with State and local education personnel, parents, experts in the field of assessment and others interested in the area of assessment to identify best practice that could serve as the basis for a technical assistance document. As provided in Sec. 300.347(a)(5), the IEP team must determine whether a child with</p>

a disability will participate in a particular State or district-wide assessment of student achievement, and if the child will not, the IEP must include a statement of why that assessment is not appropriate for the child and how the child will be assessed. If IEP teams properly make individualized decisions about the participation of each child with a disability in general State or district-wide assessments, including the use of appropriate accommodations, and modifications in administration (including individual modifications, as appropriate), it should be necessary to use alternate assessments for a relatively small percentage of children with disabilities. Consistent with the decision to not include notes in these final regulations, the note is deleted.

Section 300.138 requires the State or LEAs, as appropriate, to develop alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs. Alternate assessments need to be aligned with the general curriculum standards set for all students and should not be assumed appropriate only for those student with significant cognitive impairments.

Section 300.347(a)(5) requires that the IEP team have the responsibility and the authority to determine what, if any, individual modifications in the administration of State or district-wide assessments are needed in order for a particular child with a disability to participate in the assessment. Section 300.138(a) should be revised to reflect the requirement that modifications in administration of State or district-wide assessments must be provided if necessary to ensure the participation of children with disabilities in those assessments. As part of each State's general supervision responsibility under Sec. 300.600, it must ensure the appropriate use of modifications in the administration of State and district-wide assessments.

Test validity is an important variable and the Department has invested discretionary funds in providing assistance to States regarding appropriate modifications. The determination of what level of an assessment is appropriate for a particular child is to be made by the IEP team. It should be noted, however, that out of level testing will be considered a modified administration of a test rather than an alternative test and as such should be reported as performance at the grade level at which the child is placed unless such reporting would be statistically inappropriate.

Although SEAs and LEAs are not required by Sec. 300.138 to conduct alternate assessments until July 1, 2000, each SEA and LEA is required to ensure, beginning July 1, 1998, that, if a child will not participate in the general assessment, his or her IEP documents how the child will be assessed.

Changes: Paragraph (a) has been revised to acknowledge that, for some children with disabilities, participation in State and district-wide assessments may require appropriate modifications in administration of the assessments as well as appropriate accommodations. The note has been removed.

IDEA Statute	Regulations	Analysis of Comments and Changes
Reports Relating to Assessments		
<p>[This continues the item that was begun above in the section on "Participation in Assessments".]</p> <p>(B) REPORTS- The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:</p> <p>(I) The number of children with disabilities participating in regular assessments.</p> <p>(ii) The number of those children participating in alternate assessments.</p> <p>(iii) (I) The performance of those children on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.</p> <p>(II) Data relating to the performance of children described under subclause (I) shall be disaggregated--</p> <p>(aa) for assessments conducted after July 1, 1998; and</p> <p>(bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1, 1998.</p>	<p>§ 300.139 Reports relating to assessments.</p> <p>(a) <i>General.</i> In implementing the requirements of Sec. 300.138, the SEA shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following information:</p> <p>(1) The number of children with disabilities participating--</p> <p>(i) In regular assessments; and</p> <p>(ii) In alternate assessments.</p> <p>(2) The performance results of the children described in paragraph (a)(1) of this section if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children--</p> <p>(i) On regular assessments (beginning not later than July 1, 1998); and</p> <p>(ii) On alternate assessments (not later than July 1, 2000).</p> <p>(b) <i>Combined reports.</i> Reports to the public under paragraph (a) of this section must include--</p> <p>(1) Aggregated data that include the performance of children with disabilities together with all other children; and</p> <p>(2) Disaggregated data on the performance of children with disabilities.</p> <p>(c) <i>Timeline for disaggregation of data.</i> Data relating to the performance of children described under paragraph (a)(2) of this section must be disaggregated--</p> <p>(1) For assessments conducted after July 1, 1998; and</p> <p>(2) For assessments conducted before July 1, 1998, if the State is required to disaggregate the data prior to July 1, 1998.</p> <p>(Authority: 20 U.S.C. 612(a)(17)(B))</p>	<p>Comment: Several commenters noted that the requirement in Sec. 300.139(b)(1) that each State's reports to the public include ``aggregated data that include the performance of children with disabilities together with all other children'' exceeds the requirements of the Act at section 612(a)(17)(B), and should be deleted from the regulations. Other commenters requested clarification as to whether States are required to aggregate data regarding children who take alternate assessments with results for students who take the general assessment. Other commenters requested that the regulations require or suggest that States disaggregate assessment results by disability category in reporting results to the public. A few commenters requested that ``public agency'' be replaced with ``SEA'' in the note following Sec. 300.139.</p> <p>Discussion: In order to ensure that students with disabilities are fully included in the accountability benefits of State and district- wide assessments, it is important that the State include results for children with disabilities whenever the State reports results for other children. When a State reports data about State or district-wide assessments at the district or school level for nondisabled children, it also must do the same for children with disabilities. Section 300.139 requires that each State aggregate the results of children who participate in alternate assessments with results for children who participate in the general assessment, unless it would be inappropriate to aggregate such scores.</p> <p>Section 300.139 and the Act neither require nor prohibit States from disaggregating assessment results by disability category in reporting results to the public; this is a matter that should be left to the discretion of each State. The text of Sec. 300.139 tracks the statute, which addresses reporting requirements of the SEA.</p> <p>The proposed note clarified that Sec. 300.139(b) requires a public agency to report aggregated data that include children with disabilities, but that a public agency is not precluded from also analyzing and reporting data in other ways (such as, maintaining a trendline that was established prior to including children with disabilities in those assessments).</p> <p>Changes: Consistent with the decision to not include notes in the final regulations, the note following Sec. 300.139 of the NPRM has been removed.</p>

IDEA Statute	Regulations	Analysis of Comments and Changes
Individualized Education Program (IEP)		
<p>[Section 614 adds new components to the individualized education program (IEP) including:]</p> <p>(I) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and</p> <p>(II) if the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of--</p> <p>(aa) why that assessment is not appropriate for the child; and</p> <p>(bb) how the child will be assessed; (Sec. 614(d)(1)(A)(v)).</p>	<p>§ 300.347 Content of IEP.</p> <p>...(5)(i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and</p> <p>(ii) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of--</p> <p>(A) Why that assessment is not appropriate for the child; and</p> <p>(B) How the child will be assessed;</p>	<p>Comment: A few comments were received on Sec. 300.347(a)(5) (related to State or district-wide assessments), including requesting that: (1) the regulations clarify that if the individual modifications necessary for a child to participate in the assessment are not known at the time of the IEP meeting, a subsequent meeting be required to make this determination, as long as the decision is made before the assessment is conducted; and (2) an alternate assessment not be construed as an exemption and a separate assessment system, but, rather, that the provision in Sec. 300.347(a)(5)(ii)(B) be amended to require a statement of how the child will be included in the State or district-wide assessment program with an alternative assessment.</p> <p>Discussion: If the individual modifications necessary for a child to participate in the assessment are not known at the time of the IEP meeting, it would be necessary for a subsequent meeting to be conducted early enough to ensure that any necessary modifications are in place at the time the assessment is administered. It is not necessary, however, to add a regulation to address this matter.</p> <p>The IDEA Amendments of 1997 require that all children with disabilities be included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. (Sec. 300.138). In some cases, alternate assessments may be necessary, depending on the needs of the child, and not the category or severity of the child's disability.</p> <p>Changes: None.</p>