

Reauthorizing ESEA

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Students With Disabilities

A POCKET GUIDE



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Students With Disabilities

First introduced in 1965, the Elementary and Secondary Education Act (ESEA) has evolved over nearly five decades, emphasizing education reform priorities that mirror the changing national education policy conversation. The most recent iteration of ESEA, also known as the No Child Left Behind Act (NCLB), was enacted in 2001. It emphasized improving outcomes for all students regardless of their race, native language, or disability, with a focus on accountability for schools and districts. A decade later, ESEA is again due for reauthorization. This Pocket Guide will assist policymakers and educators as they consider changes to this law in relation to improving results for students with disabilities (SWDs).

A Special Population

Although its goal of 100 percent proficiency by the end of the 2013–14 school year applies to all students, NCLB places special emphasis on the achievement gaps among specific student populations. NCLB requires all States to establish annual measurable objectives for student performance, and to assess the adequate yearly progress (AYP) of districts, schools, and subgroups of students toward those objectives. Students with disabilities are one of the specified subgroups, accounting for 13 percent of total public school enrollment (National Center for Education Statistics, 2010).

Students in the SWD subgroup have a wide range of learning needs and disabilities, but as a whole, the subgroup has chronically low performance relative to non-disabled peers. For example, in the 2009 National Assessment of Educational Progress (NAEP), just 19 percent of 4th graders with disabilities scored proficient or above in mathematics, compared to 41 percent of their non-disabled peers (see “By the Numbers”). This achievement gap also exists for reading and persists for 8th graders (National Center for Education Statistics, 2009a, 2009b).

SWDs have historically been marginalized from accountability efforts, often excluded from assessments. The 1997 amendments to the Individuals with Disabilities Education Act (IDEA) addressed this by requiring States to include SWDs in State and district assessments and to report on their participation and performance. NCLB took this further by requiring States, districts, and schools to make progress toward participation and performance objectives for this population.

What is IDEA?

Federal legislation regarding accountability for SWDs predates NCLB, predominantly through IDEA. First enacted in 1975 as the *Education for All Handicapped Children Act* (Public Law 94-142), IDEA requires that each eligible SWD have an Individualized Education Program (IEP) that specifies the student’s individualized goals and the special education services needed to meet those goals.

While it initially focused on procedural compliance, the law’s 2004 reauthorization brought it in closer alignment with NCLB’s performance accountability. The 2004 IDEA required States to set, and report progress toward meeting, performance goals aligned with the State’s definition of AYP. Nonetheless, there is inherent tension between IDEA, which focuses on individual students’ needs, and ESEA, which emphasizes common standards for all students.

Overview of the Current Provisions of NCLB for SWDs

NCLB holds States, districts, and schools accountable for making AYP for all students as well as for subgroups of students. Below are some key provisions and guidance that pertain to the SWD subgroup.

Minimum subgroup size. For a district or school to be explicitly accountable for a particular subgroup, the membership of that group across the tested grades must be at least a certain number—commonly referred to as a “minimum N”—to ensure reliable analyzing and reporting. Under NCLB, States establish their

own minimum N requirements, which vary from 5 to as many as 100. Districts and schools with subgroups smaller than the minimum N established by their State are not required to meet the annual measurable objectives for that particular group (although those students are included in the whole-school target).

Alternate assessments. For some students whose disabilities are severe, the regular State assessment may not be appropriate for measuring their achievement, even with accommodations. Indeed, students' Individualized Education Programs (IEPs) under IDEA may require that they take specially designed exams called alternate assessments. Regulations from the U.S. Department of Education (ED) permit the scores from these assessments to be used in determining AYP, subject to certain limitations:

- ▲ *Alternate assessments aligned to alternate achievement standards (AA-AAS).* Intended for students with significant cognitive disabilities, these assessments are substantially reduced in complexity and breadth. This is sometimes called the “1 percent assessment”: the number of scores from such tests that can be counted as proficient for AYP determination may not exceed 1 percent of all students enrolled in the tested grades at the district level.
- ▲ *Alternate assessments aligned to modified achievement standards (AA-MAS).* A more controversial option, these assessments are designed for SWDs who are expected to learn grade-level content but who may not be able to master the content on the same timeline as their non-disabled peers. These assessments may be aligned to achievement standards that are less challenging than the grade-level standards. Permitted in 2007, the use of these scores for AYP determination is capped at 2 percent of all students (or roughly 20 percent of SWDs) at the district level. Guidance published by ED in October 2011 would eliminate this option as one of the requirements for a State seeking exemption from certain requirements of Title I of ESEA (U.S. Department of Education, 2011).

Highly qualified personnel. A key provision in the 2001 reauthorization of ESEA is an expanded State role for ensuring teacher quality through the Act’s “highly qualified teacher” (HQT) provision. Title I, Part A, of ESEA requires that States ensure that 100 percent of their teachers in core academic subjects (English language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography) be “highly qualified.”

To be a highly qualified teacher, the following three criteria must be met:

1. The teacher must hold a bachelor’s degree.
2. The teacher must have obtained full State certification (through a traditional or alternative route).
3. The teacher must have demonstrated subject-matter expertise in each core academic subject taught (how this is demonstrated can vary, depending, for example, on whether a teacher is new to the profession or is teaching special education, and can include passing a State examination, completing an advanced degree, or holding a college major in the subject taught).

The rules for teachers of SWDs became further complicated with the 2004 reauthorization of IDEA, which called for an alignment of special education teacher qualification requirements with NCLB HQT requirements. Any teacher of SWDs who is identified as the primary instructor for a core academic subject must be fully certified as a special education teacher, and must meet the HQT requirements for the content area taught. Thus, under IDEA, all special education teachers must not only meet the HQT provisions outlined above, they must also not have had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis.

What We Have Learned Over the Past Decade

Research shows variation in school accountability for the SWD subgroup and in the use of alternate assessments. It also demonstrates the need for a broader conceptualization of accountability and teacher qualifications for these students in order to improve outcomes for this student population.

Achievement gaps persist. While the assessment community has made great strides in improving assessments for SWDs, the data indicate that efforts to improve instruction for SWDs have been less successful. NAEP data show relatively little improvement in performance for SWDs over the past decade, with large percentages of SWDs performing Below Basic in both reading and math (see “By the Numbers”).

There is wide variation in the percentage of schools accountable for the SWD subgroup. Johnson, Peck, and Wise (2007) found that between 15 percent and 96 percent of schools across four States and Washington, DC, were required to include the performance of the SWD subgroup in AYP calculations in 2005–06. Likewise, the Commission on NCLB (2006) reported that the percentage of schools held accountable for SWDs ranged from 9 percent to nearly 60 percent across five States in 2004–05, representing 28 percent and 70 percent of tested SWDs, respectively.

The Inclusion of Students With Disabilities in School Accountability Systems is a pending report from American Institutes for Research (AIR) for a U.S. Department of Education study on school accountability, school practices, and SWD achievement in relation to school accountability status. The study, sponsored by the Institute of Education Sciences (IES), is part of a national assessment of the IDEA. To be released in early 2012, the interim report examines national data to answer such questions as the percentage of schools accountable for SWD performance, the movement of schools in and out of accountability, and the AYP performance and school improvement status of SWD-accountable schools.

Few schools miss AYP due to the performance of the SWD subgroup. Despite concerns about over-identifying schools for school improvement based on SWD performance, few schools miss AYP solely due to the performance of a single subgroup. A 2006 Institute of Education Sciences (IES) report found that a greater percentage of schools missed AYP in 2003–04 due to the performance of all students or due to the performance of two or more subgroups (51 percent) than due to the performance of a single subgroup (23 percent). In another study of four States and Washington, DC, just 9 percent of schools that missed AYP in 2005–06 did so because of a single subgroup (Johnson, Peck, & Wise, 2007). However, among schools that *did* miss AYP for a single subgroup, more schools did not meet it because of SWD subgroup performance than because of any other subgroup's performance (IES, 2006; Johnson, Peck, & Wise, 2007).

There is variability in the use and quality of alternate assessments, along with variation in participation rates and permitted accommodations.

A major amendment to IDEA in 1997 required that students with disabilities participate in State assessments. Prior to this, small proportions of SWDs were included in assessments, and few States provided the accommodations that many of these students would need to be fairly assessed. Also, important in the 1997 legislation was the obligation to develop alternate assessments for students with significant cognitive disabilities. Since 1997, States have developed and implemented policies to provide accommodations, have fielded alternate assessments, and have greatly expanded the participation of SWDs in assessments. By 2007–08, between 29 and 92 percent of SWDs took regular assessments with accommodations, and participation in the alternate assessments based on alternate standards (AA-AAS) ranged from 4 to 20 percent at the elementary school level by State. Although all 50 States currently have an AA-AAS, just 9 states had an alternate assessment based on modified standards (AA-MAS) in 2007–08. Among these nine States, the proportion of SWDs assessed on the AA-MAS ranged from 10 to 40 percent in reading and from 5 to 36 percent in mathematics at the elementary school level (Altman, Thurlow, & Vang, 2010).

Including Students With Significant Cognitive Disabilities In Accountability

Beginning in 1997, when the alternate assessment requirement was first established by IDEA, most States developed alternate assessments that evaluated students with significant cognitive disabilities by assembling portfolios of student work and evaluating the work with standardized protocols. There was no history of attempts to assess these students, and very little technical expertise was available. Therefore, the use of portfolios provided a method for States to implement procedures to meet the new assessment requirements in a timely fashion. More recently, concerns have been raised about portfolios and the degree to which student products have actually been done by the student. In addition, the data produced by portfolios also do not meet the technical requirements necessary to assess student growth over time or from grade to grade.

AIR has developed and implemented, in several States, an alternate assessment that consists of a series of performance tasks that students independently complete. The data from these assessments have the same technical characteristics as the data from the general assessment used by States for typically developing students (Phillips, Danielson, & Wright, 2009). This means, for example, that these assessments can be used to assess student growth over time or to determine whether schools are doing a better job with these students in the current year than they did in previous years. Up until very recently, experts believed that use of growth models for this population of students would never be possible. These advances mean we now have assessments available for the students with the most significant disabilities that match the quality of assessments for other students.

There is a wide variety of certification and licensure structures for teachers of SWDs across the States. According to a report from the National Comprehensive Center for Teacher Quality (2009), there is a lack of consistency among States regarding requirements for certification of teachers of SWDs. This makes it difficult for States to determine HQT status for special education teachers. Many States require teachers of SWDs to hold a general education certificate with a special education endorsement. Other States require special education

teachers to hold a specific special education certificate. Many States require some variation of special education and content-area endorsements. Significant complications in determining HQT status for special educators, as required under ESEA, arise when considering how States address the following:

- ▲ **Grade or age level designations.** Many States include a cross-grade/age certificate, which does not provide accurate distinctions between teaching skills needed for early childhood, prekindergarten, elementary, middle grades, and secondary levels.

By the Numbers: Mathematics Achievement Levels at Grade 4 by Students' Disability Status: Various Years, 2003–2009

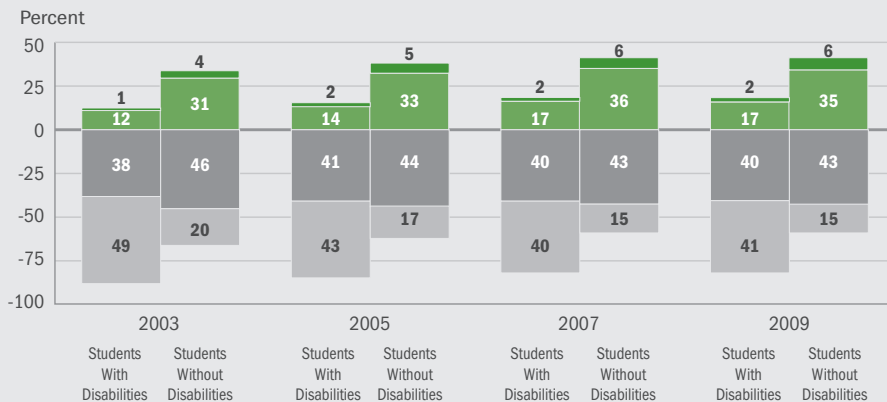


Exhibit reads: In 2003, 12 percent and 1 percent of SWDs in grade 4 scored proficient and advanced, respectively, on the 2003 NAEP mathematics assessment. By comparison, 31 percent of students without disabilities scored proficient and 4 percent scored advanced.

NOTE: Detail may not sum to totals because of rounding. Some apparent differences between estimates may not be statistically significant.

SOURCE: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), 2003, 2005, 2007, and 2009 Mathematics Assessments.

- ▲ **Type of disability designations.** Most States use one or more disability-specific distinctions in their certification requirements; however, there are several States that use a cross-categorical certificate to cover more than one type of disability.
- ▲ **Severity of disability designations.** Many States use cross-categorical certificates that cover multiple levels of severity.
- ▲ **Content designations.** The majority of States do not include core content requirements for secondary special education teacher certification, *which directly diverges* from Federal HQT requirements.

By the Numbers: Reading Achievement Levels at Grade 4 by Students' Disability Status: Various Years, 2002–2009

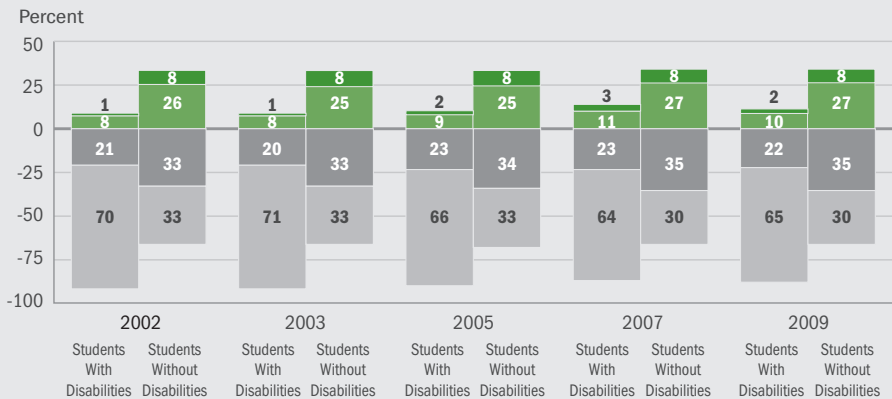


Exhibit reads: In 2002, 8 percent and 1 percent of SWDs in grade 4 scored proficient and advanced, respectively, on the NAEP reading assessment. By comparison, 26 percent of students without disabilities scored proficient and 8 percent scored advanced.

NOTE: Detail may not sum to totals because of rounding. Some apparent differences between estimates may not be statistically significant.

SOURCE: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), 2002, 2003, 2005, 2007, and 2009 Reading Assessments.

In addition to issues related to certification and licensure, there is research that suggests that States have encountered difficulty in meeting the HQT requirements even when able to measure them accurately. For example, many special education positions are left empty or are filled with uncertified personnel (Billingsley, Fall, & Williams, 2006; Boe & Cook, 2006; McLeskey, Tyler, & Flippin, 2004). Additionally, 82 to 99 percent of secondary special education teachers are not highly qualified in the core content areas (e.g., mathematics, science) they teach (McLeskey & Billingsley, 2008).

Moving Forward: Key Considerations for Reauthorization

In moving forward with the reauthorization of ESEA, some **key considerations** include the following:

Consider the impact of assessment reforms on SWDs. The movement to common standards and assessments creates a need for States to develop consistent accommodation policies. As we develop new assessments, we need to ensure that principles of universal design are considered, whereby approaches to learning are flexible, customized, and adjusted for individual needs. The use of computer-administered assessments can facilitate access through adaptive testing—a computer-based test that adapts to the student’s ability level. Adaptive testing can be particularly useful for students whose knowledge of content is either at the low end or high end of the performance distribution because it ensures that students have access to both content they know and content that is challenging for them. Ultimately, this (along with the use of a common assessment across States) has the potential to reduce the number of SWDS who are removed from the general assessment.

Maximize inclusion of SWDs in school accountability. As a result of each State setting its own minimum subgroup size for school accountability for that subgroup, there are considerable numbers of SWDs in schools that are not accountable for them. One State employs a minimum N of 5 (meaning that essentially all schools are accountable for the SWD subgroup), while another uses a minimum N of 100 (resulting in a large proportion of schools that are not accountable). Schools that are not accountable for SWDs may be less likely to devote enough attention and resources to improving the achievement of these students. Reauthorization amendments to limit accountability efforts to a subset of schools (e.g., the lowest performing schools) would result in fewer SWDs included in school accountability.

Sustain high expectations for SWDs. States are permitted to test some SWDs with assessments based on lowered expectations (i.e., based on alternate or modified achievement standards). Although there is a cap on the percentage of students who can be counted as proficient on these assessments, there is no cap on the number or percentage of students who can be assessed. As a result, large proportions of SWDs have significantly lowered expectations for learning. For the vast majority of SWDs who are participating in the general education curriculum at their appropriate grade level, these alternate assessments may not provide enough challenging content. A major issue for the reauthorization is now to ensure that expectations for each child are sufficiently challenging.

Work to systematically align requirements for general and special education teachers. Greater alignment between certification requirements for teachers of SWDs is needed to increase consistency between States and to reduce confusion between requirements for general and special education teachers. This is especially important as States and districts continue to explore co-teaching and other collaborative methods. This alignment may help reduce

both real and perceived barriers into the special education profession, and improve the ability of States and districts to recruit and retain qualified and effective teachers of SWDs.

Shift State and Federal policy to ensure highly effective teachers for SWDs.

Federal policy enacted under the American Recovery and Reinvestment Act (ARRA) incentivized States and districts to move beyond ensuring a highly qualified workforce (including teachers of SWDs) to one that is highly effective. How to successfully measure effectiveness, especially for teachers of SWDs, is still an open question, however (see “Including Students With Significant Cognitive Disabilities in Accountability” sidebar on page 7). As States and districts respond to the ARRA funding requirements—specifically, requirements for develop comprehensive evaluation systems that include multiple measures of student learning, including rigorous observations and student growth measures—it is essential to focus on the special needs of teachers of SWDs.

Improving Achievement

Response to Intervention (RTI) holds great promise to help schools intervene in the primary grades with students who are struggling and ultimately to prevent early failure. These efforts can prevent inappropriate referrals to special education, and they provide perhaps the single best way to reduce the overrepresentation of minority students in special education. AIR manages two major technical assistance centers funded by the U.S. Department of Education’s Office for Special Education Programs, to support

the development of RTI and intensive interventions. The National Center on Intensive Interventions (NCII) will provide technical assistance to States and school districts to ensure that SWDs who require these services receive evidence-based supports to ensure they achieve to high standards. The National Center on RTI (NCRTI) provides technical assistance to States throughout the United States. For more information on RTI, please see the NCRTI website at www.rti4success.org.

For example, in classrooms with co-teachers, there needs to be a focus on how to measure each teacher's contribution to student achievement, especially given the varied testing requirements for SWDs. The resulting data should help identify practices that contribute to improved student learning, and allow administrators to make sound hiring and performance decisions.

The following **key questions** may help guide thinking about the future direction for improving the results for students with disabilities:

- ▲ What data on the instructional challenges of SWDs do teachers need, and what assessments can best deliver that information?
- ▲ What are the additional enhancements required for State assessments to ensure they permit SWDs to be fairly and accurately assessed?
- ▲ How can the issue of minimum subgroup size be addressed to ensure that virtually all schools that have SWDs are accountable for this subgroup?
- ▲ Given the tremendous variability in the individual characteristics of SWDs, how can achievement standards be established that challenge schools to do better for this population?
- ▲ Given the number of students with high-incidence disabilities, how can preparation programs better prepare teachers to integrate strategies to differentiate instruction for all learners?
- ▲ How can the accountability system be designed so that it stimulates improvements in instruction that lead to increased achievement for SWDs?
- ▲ What resources, practices, and policies will ensure that SWDs receive the high-quality, intensive instruction they require to meet challenging expectations?

Until NCLB, the IDEA was the only piece of Federal legislation with a significant impact on the education of students with disabilities. NCLB was notable for setting the same bar for SWDs as for other subgroups of students. In this sense, the legislation was “inclusive,” and as a result has had broad support among parents of SWDs and other disability constituencies. In addition, NCLB went beyond the requirements of the IDEA to hold States, districts, and schools accountable for the academic progress of this population. Because of NCLB’s expectation of improved outcomes for SWDs, the reauthorization of ESEA will receive intense attention from stakeholders concerned about the education of this special population.

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