

1 **§200.2. State responsibilities for assessment.**

2 (a) (1) Each State, in consultation with its LEAs, must
3 implement a system of high-quality, yearly student academic
4 assessments that includes, at a minimum, academic assessments in
5 mathematics, reading/language arts and, ~~beginning in the 2007-08~~
6 ~~school year,~~ science.

7 (2) (i) The State may also measure the achievement of
8 students in other academic subjects in which the State has
9 adopted challenging State academic content and student academic
10 achievement standards.

11 (ii) If a State has developed assessments in other subjects
12 for all students, the State must include students participating
13 under subpart A of this part in those assessments.

14 (b) The assessments system required under this section
15 must meet the following requirements:--

16 (1) (i) Except as provided in §200.6(c) and sections
17 1111(b) (2) (C), 1111(b) (2) (H), and 1204 of the Act, Be the same
18 assessments system used to measure the achievement of all
19 students in accordance with §200.3 or §200.4.; and

20 (ii) Be administered to all students consistent with
21 §200.5(a);

22 (2) (i) Be designed to be valid and accessible for use by the
23 ~~widest possible range of all~~ students, including students with
24 disabilities and ~~students with limited~~ English learners
25 proficiency.; and

26 (ii) Be developed, to the extent practicable, using the
27 principles of universal design for learning. Under this section,
28 the term "universal design **for learning**" means a scientifically
29 valid framework for guiding educational practice that--

30 (A) Provides flexibility in the ways information is
31 presented, in the ways students respond or demonstrate knowledge
32 and skills, and in the ways students are engaged; and

33 (B) Reduces barriers in instruction, provides appropriate
34 accommodations, supports, and challenges, and maintains high
35 achievement expectations for all students, including students
36 with disabilities and students who are English learners;

37 (3) (i) Be aligned with the ~~State's~~ challenging State
38 academic content and student academic achievement standards.
39 Specifically, each assessment in a State's system of
40 assessments under this section must--

41 (A) (1) Be aligned to the challenging State academic content
42 standards; and

43 (2) Address the depth and breadth of those standards; and

44 (B) (1) Measure student performance based on challenging
45 State academic achievement standards that are aligned with
46 entrance requirements for credit-bearing coursework in the system

1 of public higher education in the State and relevant State career
2 and technical education standards consistent with section
3 1111(b)(1)(D) of the Act; or
4 (2) With respect to alternate assessments for students with
5 the most significant cognitive disabilities, measure student
6 performance based on alternate academic achievement standards
7 defined by the State consistent with section 1111(b)(1)(E) of the
8 Act that reflect professional judgment as to the highest possible
9 standards achievable by such students to ensure that a student
10 who meets the alternate academic achievement standards is on
11 track to pursue postsecondary education or **competitive,**
12 **integrated** employment, consistent with the purposes of the
13 Rehabilitation Act of 1973 as amended by the Workforce Innovation
14 and Opportunity Act, as in effect on July 22, 2014; and
15 (ii) Provide coherent and timely information about student
16 attainment of those standards, and whether a student is
17 performing at the grade level in which the student is enrolled;
18 (4)(i) Be valid, ~~and reliable,~~ **and fair** for the purposes for
19 which the assessments ~~system is~~ are used; and
20 (ii) Be consistent with relevant, nationally recognized
21 professional and technical ~~testing standards;~~
22 (5) Be supported by evidence ~~(which the Secretary will~~
23 ~~provide, upon request, consistent with applicable federal laws~~
24 ~~governing the disclosure of information) from test publishers or~~
25 ~~other relevant sources that--~~
26 (i) ~~The assessments system is~~ of adequate technical
27 quality--
28 (A) ~~For each purpose required under the Act; and~~
29 ~~(i) B) Consistent with the requirements of this section;~~ and
30 (ii) Is made available to the public, including on the
31 State's website;
32 (6) Be administered in accordance with the ~~timeline~~
33 ~~frequency described in §200.5(a);~~
34 (7) Involve multiple up-to-date measures of student academic
35 achievement, including measures that assess higher-order thinking
36 skills and understanding of challenging content, as defined by
37 the State. These measures may ~~include--~~
38 (i) ~~Single or multiple question formats that range in~~
39 ~~cognitive complexity within a single assessment~~ Include measures
40 of student academic growth; and
41 (ii) ~~Multiple assessments within a subject area~~ Be partially
42 delivered in the form of portfolios, projects, or extended
43 performance tasks--;
44 (8) Objectively measure academic achievement, knowledge, and
45 skills without evaluating or assessing personal or family beliefs
46 and attitudes, except that this provision does not preclude the
47 use of ~~items--~~

- 1 (i) ~~Such as~~ Constructed-response, short answer, or essay
2 questions; or
- 3 (ii) Items that require a student to analyze a passage of
4 text or to express opinions;
- 5 (9) Provide for participation in the assessments ~~system~~ of
6 all students in the grades ~~being~~ assessed consistent with §§200.5
7 and 200.6;
- 8 (10) ~~Except as provided in §200.7,~~ At the State's discretion,
9 be administered through--
- 10 (i) A single summative assessment; or
- 11 (ii) Multiple statewide interim assessments during the
12 course of the academic year that result in a single summative
13 score that provides valid, reliable, and transparent information
14 on student achievement and, at the State's discretion, student
15 growth, consistent with paragraph (b) (4) (ii) of this section;
- 16 (11) Consistent with section 1111(b) (2) (B) (xi) of the Act,
17 enable results to be disaggregated within each State, LEA, and
18 school by--
- 19 (i) Gender;
- 20 (ii) Each major racial and ethnic group;
- 21 (iii) English proficiency status;
- 22 (iv) Status as a migratory child as defined in section
23 1309(3) of Title I, part C of the ~~Elementary and Secondary~~
24 ~~Education Act (hereinafter "the Act")~~;
- 25 (v) ~~Students~~ Children with disabilities as defined ~~under~~ in
26 section 602(3) of the Individuals with Disabilities Education Act
27 (IDEA) as compared to all other students; ~~and~~
- 28 (vi) Economically disadvantaged students as compared to
29 students who are not economically disadvantaged;
- 30 (vii) **Status as a homeless child or youth**, as defined in
31 section 752(2) of title VII, subtitle B of the McKinney-Vento
32 Homeless Assistance Act, as amended;
- 33 (viii) Status as a child in foster care. **Foster care means**
34 **24-hour substitute care for children placed away from their**
35 **parents or guardians and for whom the title IV-E agency has**
36 **placement and care responsibility. This includes, but is not**
37 **limited to, placements in foster family homes, foster homes of**
38 **relatives, group homes, emergency shelters, residential**
39 **facilities, child care institutions, and preadoptive homes. A**
40 **child is in foster care in accordance with this definition**
41 **regardless of whether the foster care facility is licensed and**
42 **payments are made by the State, tribal, or local agency for the**
43 **care of the child, whether adoption subsidy payments are being**
44 **made prior to the finalization of an adoption, or whether there**
45 **is Federal matching of any payments that are made; and**
- 46 (ix) Status as a student with a parent who is a member of
47 the Armed Forces on active duty, where the terms "Armed Forces"

1 and "active duty" have the same meanings as defined in 10 U.S.C.
2 101(a) (4) and 101(d) (5);

3 (12+) Produce individual student reports consistent with
4 §200.8(a); and

5 (13+) Enable itemized score analyses to be produced and
6 reported to LEAs and schools consistent with §200.8(b).

7 (c) (1) At its discretion, a State may administer the
8 assessments required under this section in the form of computer-
9 adaptive assessments if such assessments meet all the requirements
10 of section 1111(b) (2) (J) of the Act and this section. ~~(2) A~~
11 computer-adaptive assessment--

12 (i) Must measure a student's academic proficiency based on
13 the challenging State academic standards for the grade in which
14 the student is enrolled and growth toward those standards; and

15 (ii) May measure a student's academic proficiency and growth
16 using items above or below the student's grade level. ~~provided~~
17 ~~that the assessment obtains sufficient valid and reliable~~
18 ~~information to make a determination of grade-level proficiency~~
19 ~~and meets all requirements of §§200.2, 200.6, and 200.8.~~

20 ~~(3) If a State administers a computer-adaptive assessment,~~
21 ~~the determination under section 1111(b) (2) (B) (ii) of the Act of~~
22 ~~a student's academic proficiency for the grade in which the~~
23 ~~student is enrolled must be reported on all reports required by~~
24 ~~§200.8 and any other public reports and reports to the Secretary~~
25 ~~section 1111(h) of the Act.~~

26 ~~(4) For students with the most significant cognitive~~
27 ~~disabilities assessed using a computer-adaptive alternate~~
28 ~~assessment aligned to alternate academic achievement standards~~
29 ~~(AA-AAAS) under section 1111(b) (2) (D) of the Act or English~~
30 ~~learners who are assessed using a computer-adaptive English~~
31 ~~language proficiency assessment under section 1111(b) (2) (C) of~~
32 ~~the Act, data regarding student academic achievement or English~~
33 ~~proficiency must be reported in the same manner that such data~~
34 ~~otherwise would be reported for assessments that are not~~
35 ~~computer-adaptive.~~

36 ~~(c) The State assessment system may include academic~~
37 ~~assessments that do not meet the requirements in paragraph (b) of~~
38 ~~this section as additional measures. Those additional~~
39 ~~assessments--~~

40 ~~(1) May not reduce the number, or change the identity, of~~
41 ~~schools that would otherwise be subject to school improvement,~~
42 ~~corrective action, or restructuring under section 1116 of Title I~~
43 ~~of the Act, if those assessments were not used; but~~

44 ~~(2) May identify additional schools for school improvement,~~
45 ~~corrective action, or restructuring.~~

46 (d) A State must submit evidence for peer review of State
47 assessments under section 1111(a) (4) of the Act that its

1 assessments under this section and §§200.3, 200.4, 200.5(b),
2 200.6(c), and 200.6(f) (1) and (3) meet all applicable
3 requirements.
4 (Authority: 10 U.S.C. 101(a) (4) and (d) (5), 20 U.S.C. 1003(24),
5 6311(a) (4), 6311(b) (~~23~~), 6399(3), 42 U.S.C. 11434a; and 45 CFR
6 1355(a))

1 Remove and replace the current text of §200.3 with the following:

2 **§200.3. Locally Selected, Nationally Recognized High School**
3 **Academic Assessments.**

4 (a) In general. (1) A State, at the State's discretion,
5 may permit an LEA to administer a nationally recognized high
6 school assessment in each of reading/language arts, mathematics,
7 or science, approved in accordance with paragraph (b) of this
8 section, in lieu of the respective statewide assessment under
9 §200.5(a)(1)(i)(B) and (a)(1)(ii)(C) if such assessment meets all
10 requirements of this section.

11 (2) An LEA must administer the same locally selected,
12 nationally recognized academic assessment to all high school
13 students in the LEA consistent with the requirements in
14 §200.5(a)(1)(i)(B) and (a)(1)(ii)(C).

15 (b) State approval. If a State chooses to allow an LEA to
16 administer a nationally recognized high school academic
17 assessment under paragraph (a) of this section, the State must--

18 (1) Establish and use technical criteria to determine if the
19 assessment--

20 (i) Is aligned to the challenging State academic standards;

21 (ii) Addresses the depth and breadth of those standards;

22 (iii) Is equivalent to or more rigorous than the statewide
23 assessments under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as
24 applicable, with respect to--

25 (A) The coverage of academic content;

26 (B) The difficulty of the assessment;

27 (C) The cognitive complexity of the assessment overall;

28 (D) The overall quality of the assessment; and

29 (E) Any other aspects of the assessment that the State may
30 establish in its technical criteria;

31 (iv) Meets all requirements under §200.2(b), except for
32 §200.2(b)(1), and ensures that all high school students in the
33 LEA are assessed consistent with §§200.5(a) and 200.6; and

34 (v) Produces valid and reliable data on student academic
35 achievement with respect to all high school students and each
36 subgroup of high school students in the LEA that--

37 (A) Are comparable to student academic achievement data for
38 all high school students and each subgroup of high school
39 students produced by the statewide assessment;

40 (B) Are expressed in terms consistent with the State's
41 academic achievement standards under section 1111(b)(1)(A) of the
42 Act; and

43 (C) Provide unbiased, rational, and consistent
44 differentiation among schools within the State for the purpose of
45 the State-determined accountability system under section 1111(c)
46 of the Act;

1 (2) Before approving any nationally recognized high school
2 academic assessment for use by an LEA in the State--

3 (i) Ensure that the use of appropriate accommodations under
4 §200.6(b) and (f) does not deny any student the opportunity to
5 participate in the assessment or afford any benefit from such
6 participation that is not equal to the benefit afforded to
7 students who do not use such accommodations; and

8 (ii) Submit evidence to the Secretary in accordance with the
9 requirements for peer review of State assessments under section
10 1111(a)(4) of the Act demonstrating that any such assessment
11 meets the requirements in this section; and

12 (3) Approve an LEA's request to use a locally selected,
13 nationally recognized high school academic assessment that meets
14 the requirements in this section.

15 (c) LEA applications. (1) As part of requesting approval
16 to use a locally selected, nationally recognized high school
17 academic assessment, an LEA must update its LEA plan under
18 section 1112 or section 8305 of the Act, including how it was
19 developed consistent with all requirements for consultation under
20 sections 1112 and 8538 of the Act.

21 (2) Before an LEA requests approval from the State to use a
22 locally selected, nationally recognized high school academic
23 assessment, the LEA must notify all parents of high school
24 students it serves--

25 (i) That the LEA intends to request approval from the State
26 to use a locally selected, nationally recognized high school
27 academic assessment in place of the statewide academic assessment
28 under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable;

29 (ii) How parents may provide meaningful input regarding the
30 LEA's request; and

31 (iii) Of any effect of such request on the instructional
32 program in the LEA.

33 (3) Upon approval, the LEA must notify all parents of high
34 school students it serves that the LEA received approval and will
35 use such locally selected, nationally recognized high school
36 academic assessment instead of the statewide academic assessment
37 under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable.

38 (4) In each subsequent year following approval in which the
39 LEA elects to administer a locally selected, nationally
40 recognized high school academic assessment, the LEA must notify--

41 (i) The State of its intention to continue administering
42 such assessment; and

43 (ii) Parents of which assessment the LEA will administer to
44 students to meet the requirements of §200.5(a)(1)(i)(B) and
45 (a)(1)(ii)(C), as applicable, at the beginning of the school
46 year.

47 (5) The notices to parents under this paragraph must--

1 (i) Be in an understandable and uniform format;
2 (ii) Be, to the extent practicable, written in a language
3 that parents and guardians can understand or, if it is not
4 practicable to provide written translations to a parent or
5 guardian with limited English proficiency, be orally translated
6 for such parent or guardian;
7 (iii) Be, upon request by a parent or guardian who is an
8 individual with a disability as defined by the Americans with
9 Disabilities Act, 42 U.S.C. 12102, provided in an alternative
10 format accessible to that parent or guardian, including, but not
11 limited to, braille, large print, or electronic file; and
12 (d) Definition. "Nationally recognized high school
13 academic assessment" means an assessment of student knowledge and
14 skills of high school students that is administered in multiple
15 States and used by institutions of higher education in those
16 States for the purposes of entrance into post-secondary education
17 or training programs or courses of study or for placement into
18 courses in post-secondary education or training programs or
19 courses of study.
20 (Authority: 20 U.S.C. 6311(b)(2)(H), 6312(a), 7918; 29 U.S.C.
21 794; 42 U.S.C. 2000d-1, 12102, and 12132)

1 **§200.4. State law exception.**

2 (a) If a State provides satisfactory evidence to the
3 Secretary that neither the State educational agency (SEA) nor any
4 other State government official, agency, or entity has sufficient
5 authority under State law to adopt academic content standards,
6 student academic achievement standards, and academic assessments
7 applicable to all students enrolled in the State's public
8 schools, the State may meet the requirements under §§200.1 and
9 200.2 by--

10 (1) Adopting academic standards and academic assessments
11 that meet the requirements of §§200.1 and 200.2 on a Statewide
12 basis and limiting their applicability to students served under
13 subpart A of this part; or

14 (2) Adopting and implementing policies that ensure that each
15 LEA in the State that receives funds under subpart A of this part
16 will adopt academic standards and academic assessments aligned
17 with those standards that--

18 (i) Meet the requirements in §§200.1 and 200.2; and

19 (ii) Are applicable to all students served by the LEA.

20 (b) A State that qualifies under paragraph (a) of this
21 section must--

22 (1) Establish technical criteria for evaluating whether each
23 LEA's--

24 (i) Academic content and student academic achievement
25 standards meet the requirements in §200.1; and

26 (ii) Academic assessments meet the requirements in §200.2,
27 particularly regarding validity and reliability, technical
28 quality, alignment with the LEA's academic standards, and
29 inclusion of all students in the grades assessed;

30 (2) Review and approve each LEA's academic standards and
31 academic assessments to ensure that they--

32 (i) Meet or exceed the State's technical criteria; and

33 (ii) For purposes of this section--

34 (A) Are equivalent to one another in their content coverage,
35 difficulty, and quality;

36 (B) Have comparable validity and reliability with respect to
37 groups of students described in ~~§200.2(b)(11) section~~
38 ~~1111(b)(2)(C)(v) of the Act~~; and

39 (C) Provide unbiased, rational, and consistent determinations
40 of the annual progress of ~~LEAs and~~ schools within the State; and

41 (3) Be able to aggregate, with confidence, data from local
42 assessments to ~~determine whether the State has made adequate~~
43 ~~yearly progress~~ make accountability determinations under section
44 1111(c) of the Act.

45 (Authority: 20 U.S.C. 6311(b)(25)(E))

1 **§200.5. Timeline for aAssessments administration.**

2 (a) Frequency. (1) Reading/language arts and mathematics.
3 ~~(1) Through the 2004-2005 school year, a State must administer~~
4 ~~the assessments required under §200.2 at least once during--~~
5 ~~(i) Grades 3 through 5;~~
6 ~~(ii) Grades 6 through 9; and~~
7 ~~(iii) Grades 10 through 12.~~
8 ~~(2) Except as provided in paragraph (a) (3) of this section,~~
9 ~~beginning no later than the 2005-2006 school year, aA State must~~
10 ~~administer the assessments required under §200.2 annually as~~
11 ~~follows:~~

12 (i) With respect to both the reading/language arts and
13 mathematics assessments required under §200.2--
14 ~~(iA) In each of grades 3 through 8; and~~
15 ~~(iiB) At least once in grades 109 through 12.~~
16 ~~(3) The Secretary may extend, for one additional year, the~~
17 ~~timeline in paragraph (a) (2) of this section if a State~~
18 ~~demonstrates that--~~
19 ~~(i) Full implementation is not possible due to exceptional~~
20 ~~or uncontrollable circumstances such as--~~
21 ~~(A) A natural disaster; or~~
22 ~~(B) A precipitous and unforeseen decline in the financial~~
23 ~~resources of the State; and~~
24 ~~(ii) The State can complete implementation within the~~
25 ~~additional one year period.~~
26 ~~(bii) Science. Beginning no later than the 2007-2008 school~~
27 ~~year, A State must administerWith respect to the science, not~~
28 ~~less than one time assessments required under §200.2 must be~~
29 ~~administered at least once during **each of--**~~

30 ~~(1A) Grades 3 through 5;~~
31 ~~(2B) Grades 6 through 9; and~~
32 ~~(3C) Grades 10 through 12.~~
33 ~~(c) Timing of results. Beginning with the 2002-2003 school~~
34 ~~year, a State must promptly provide the results of its~~
35 ~~assessments no later than before the beginning of the next school~~
36 ~~year to LEAs, schools, and teachers in a manner that is clear and~~
37 ~~easy to understand.~~

38 **(2) With respect to any other subject chosen by a State, the**
39 **State may administer the assessments at its discretion.**

40 (b) Middle school mathematics exception. A State that
41 administers an end-of-course mathematics assessment ~~(e.g.,~~
42 ~~Algebra I, Geometry, Algebra II)~~ to meet the requirements under
43 §200.5(a)(2) paragraph (a)(1)(i)(B) of this section may exempt an
44 eighth-grade student from the mathematics assessment typically
45 administered in grade 8 under §200.5(a)(1) paragraph (a)(1)(i)(A)
46 of this section if--

1 (1) The student instead takes the end-of-course mathematics
2 assessment the State administers to high school students under
3 ~~§200.5(a)(2)~~ paragraph (a)(1)(i)(B) of this section;

4 (2) The student's performance on the high school assessment
5 ~~under §200.5(a)(2)~~ is used in the year in which the student takes
6 the assessment for purposes of measuring academic achievement
7 under section 1111(c)(4)(B)(i) of the Act and participation in
8 assessments under section 1111(c)(4)(E) of the Act;

9 (3) In high school--

10 (i) The student takes a **State-administered** end-of-course
11 assessment or **nationally recognized high school academic**
12 **assessment as defined in §200.3(d)** in mathematics that--

13 (A) Is more advanced than the assessment the State
14 administers under ~~§200.5(a)(2)~~ paragraph (a)(1)(i)(B) of this
15 section; and

16 (B) **Provides for appropriate accommodations consistent with**
17 **§200.6; and**

18 (ii) The student's performance on the more advanced
19 mathematics assessment is used for purposes of measuring academic
20 achievement under section 1111(c)(4)(B)(i) of the Act and
21 participation in assessments under section 1111(c)(4)(E) of the
22 Act;

23 ~~(4) The State submits evidence satisfactory to the Secretary~~
24 ~~in accordance with the requirements for peer review of State~~
25 ~~assessments under section 1111(a)(4) of the Act that any more~~
26 ~~advanced mathematics assessment administered under paragraph~~
27 ~~(a)(3) of this section meets the requirements in §200.2(b),~~
28 ~~except §200.2(b)(1); and~~

29 (45) **The State demonstrates that it offers all students in**
30 **the State the opportunity to be prepared for and to take advanced**
31 **mathematics coursework in middle school.**

32 (Authority: 20 U.S.C. 6311(b)(23) **(B)** (v) and (b)(2)(C))

1 **§200.6. Inclusion of all students.**

2 A State's academic assessment system required under §200.2
3 must provide for the participation of all students in the grades
4 assessed under §200.5(a) in accordance with this section.

5 (a) ~~Students eligible Appropriate accommodations for~~
6 ~~students under IDEA and Section 504 other Acts.~~(1) A State must
7 include in all assessments under section 1111(b)(2) of the Act,
8 with appropriate accommodations consistent with paragraphs (b)
9 and (f)(3)(iv) of this section--

10 (1) All children with disabilities as defined under section
11 602(3) of the IDEA;

12 (2) Students with the most significant cognitive
13 disabilities who are identified by their IEP teams from among the
14 students in paragraph (a)(1) of this section [~~consistent with the~~
15 ~~definition in paragraph (e)(1) of this section~~]; and

16 (3) Students eligible for assessment accommodations under
17 other Acts, ~~including section 504 of the Rehabilitation Act of~~
18 ~~1973, as amended, and title II of the Americans with Disabilities~~
19 ~~Act.~~

20 (b) ~~Appropriate accommodations for students eligible under~~
21 ~~IDEA and other acts.~~ (1i) A State's academic assessment system
22 must provide, ~~—(A) For each student with a disability~~ ~~eligible~~
23 ~~for accommodations under paragraph (a) of this section~~
24 ~~(hereinafter, student eligible for accommodations), as defined~~
25 ~~under section 602(3) of the IDEA,~~ the appropriate accommodations,
26 such as interoperability with, and ability to use, assistive
27 technology devices, that ~~the student's IEP team determines~~ are
28 necessary to measure the academic achievement of the student
29 relative to the ~~challenging State's academic content and aligned~~
30 ~~academic achievement standards for the grade in which the student~~
31 ~~is enrolled or alternate academic achievement standards under~~
32 ~~section 1111(b)(1)(E) of the Act, for students eligible under~~
33 ~~paragraph (a)(2) of this section, as determined by--consistent~~
34 ~~with §200.1(b)(2), (b)(3), and (c) section 1111(b)(1) of the Act~~
35 ~~as determined by; and~~

36 (i) ~~For each child with a disability, as defined by section~~
37 ~~602(3) of the Individuals with Disabilities Education Act (IDEA),~~
38 ~~student by~~ under paragraphs (a)(1) and (a)(2) of this section, the
39 student's individualized education program (IEP) team; or

40 (Bii) For each student under paragraph (a)(3), ~~with a~~
41 ~~disability covered under other acts other than the IDEA,~~
42 ~~including under section 504 of the Rehabilitation Act of 1973, as~~
43 ~~amended (Section 504), appropriate accommodations that the~~
44 ~~student's placement team determines are necessary to measure the~~
45 ~~academic achievement of the student relative to the State's~~
46 ~~academic content and academic achievement standards for the grade~~

1 ~~in which the student is enrolled, consistent with §200.1(b)(2),~~
2 ~~(b)(3), and (c).~~

3 ~~(ii2) A State must, as part of its guidelines for IEP teams~~
4 ~~under paragraph (b) of this section--~~

5 (Ai) Develop, disseminate information on, and promote the
6 use of appropriate accommodations **to ensure that all students**
7 **eligible for accommodations** ~~increase the number of students with~~
8 ~~the most significant cognitive disabilities who participate in~~
9 academic instruction and assessments for the grade in which each
10 student is enrolled, except that the students under paragraph
11 (a)(2) of this section may be ~~including that the student is~~ are
12 tested against **alternate** academic achievement standards ~~for the~~
13 ~~grade in which a~~ the student is enrolled; and

14 (Bii) Ensure that ~~regular~~ general and special education
15 teachers and other appropriate staff know how to administer
16 assessments, including alternate assessments under paragraph (c)
17 and paragraph (f)(3)(v) of this section, and know how to make
18 ~~making~~ appropriate use of accommodations, ~~during assessment for~~
19 **all students with disabilities eligible for accommodations** ~~and~~
20 ~~students covered under Section 504.~~

21 **(3) A State must ensure that the use of appropriate**
22 **accommodations under this paragraph and consistent with the**
23 **State's guidelines under paragraph (d) of this section with**
24 **respect to assessments adopted by the State under section**
25 **1111(b)(2) of the Act does not deny a student eligible for**
26 **accommodations the opportunity to participate in the assessment**
27 **or afford any benefit from such participation that is not equal**
28 **to the benefit afforded to students who do not use such**
29 **accommodations.**

30 (c) Alternate assessments aligned with alternate academic
31 achievement standards for students with the most significant
32 cognitive disabilities. ~~(i1) The State's academic assessment~~
33 ~~system, developed consistent with §200.2, must provide for one or~~
34 ~~more alternate assessments in reading/language arts, mathematics,~~
35 ~~and science for a child with a disability, as defined under~~
36 ~~section 602(3) of the IDEA, whom the child's IEP team determines~~
37 ~~cannot participate in all or part of the State assessments under~~
38 ~~paragraph (a)(1) of this section, even with appropriate~~
39 ~~accommodations, provided such alternate assessments--~~

40 ~~(i) Are aligned with the challenging State academic content~~
41 ~~standards under section 1111(b)(1) of the Act; and~~

42 ~~(ii) (A) Alternate assessments must yield results for the~~
43 ~~grade in which the student is enrolled in at least~~
44 ~~reading/language arts, mathematics, and, beginning in the 2007-~~
45 ~~2008 school year, science, except as provided in the following~~
46 ~~paragraph.~~

1 ~~(B2)~~ (1) If a State has **adopted** defined alternate academic
2 achievement standards permitted under section 1111(b)(1)(E) of
3 the Act ~~for~~ students with the most significant cognitive
4 disabilities, ~~alternate assessments may yield~~ ~~must~~ the State
5 must measure the achievement of those students with an alternate
6 assessment that--

7 (i) Is aligned with the challenging State academic content
8 standards under section 1111(b)(1) of the Act **for the grade in**
9 **which the student is enrolled;**

10 (ii) **Yields** results ~~that measure the achievement of~~ **for**
11 those students relative to the alternate academic achievement
12 standards ~~the State has defined under §200.1(d) section~~
13 ~~1111(b)(1)(E) of the Act.; and~~

14 **(iii) At the State's discretion, provides valid and**
15 **reliable measures of student growth across the full spectrum of**
16 **student achievement.**

17 (3) For each subject for which assessments are administered
18 under §200.2(a)(1), the total number of students assessed in that
19 subject using an alternate assessment aligned with alternate
20 academic achievement standards under paragraph (c)(2) of this
21 section may not exceed 1.0 percent of the total number of
22 students in the State who are assessed in that subject.

23 ~~(iii) If a State permits the use of alternate assessments~~
24 ~~that yield results based on alternate academic achievement~~
25 ~~standards, the State must document that students with the most~~
26 ~~significant cognitive disabilities are, to the extent possible,~~
27 ~~included in the general curriculum.~~

28 (3) ~~The~~A State must--

29 (i) Not prohibit an LEA from assessing more than 1.0 percent
30 of its assessed students in a given subject with an alternate
31 assessment aligned ~~with~~ **to** alternate academic achievement
32 standards;

33 (ii) Review information justifying the need of an LEA to
34 assess more than 1.0 percent of its assessed students with such
35 an alternate assessment, **such as evidence that school, community,**
36 **or health programs in the LEA have drawn large numbers of**
37 **families of students with the most significant cognitive**
38 **disabilities or that the total number of students assessed in the**
39 **LEA is so small that the LEA would assess more than 1.0 percent**
40 **of its assessed students using an alternate assessment even if**
41 **only one or a few students take such assessment; and**

42 (iii) Provide appropriate oversight, as determined by the
43 State based on its review of information under paragraph
44 (c)(3)(ii) of this section, of an LEA that ~~does not provide~~
45 **sufficient justification is required to submit information to the**
46 **State.**

1 (4) If a State anticipates that it will exceed ~~does not meet~~
2 the ~~requirement~~ cap under paragraph (c) (32) of this section with
3 respect to any subject for which assessments are administered
4 under §200.2(a) (1) in any school year, the State may request that
5 the Secretary waive the cap for the relevant subject, pursuant to
6 section 8401 of the Act, for one year. Such request must--

7 (i) Be submitted at least 90 days prior to the start of the
8 State's first testing window;

9 (ii) Include data demonstrating that--

10 (A) The State did not disproportionately assess students in
11 any subgroup of students with the alternate assessment aligned
12 with alternate academic achievement standards in the prior school
13 year as demonstrated by disaggregating at the State level the
14 students who took such assessment using the subgroups defined in
15 section 1111(c) (2) (A), (B), and (D) of the Act; and

16 (B) The State has measured the achievement of at least 95
17 percent of all students and the children with disabilities
18 subgroup who are enrolled in grades for which the assessment is
19 required under §200.5(a) in at least the prior school year;

20 (iii) Include assurances from the State that it has verified
21 that each LEA that the State anticipates will assess more than
22 1.0 percent of its assessed students in any subject for which
23 assessments are administered under §200.2(a) (1) in that school
24 year using an alternate assessment aligned with alternate
25 academic achievement standards, and any other LEA that the State
26 determines will significantly contribute to the State's exceeding
27 the cap under paragraph (c) (2) of this section--

28 (A) Followed each of the State's guidelines under paragraph
29 (d) of this section except (d) (6);

30 (B) Will not significantly increase, from the prior year,
31 the extent to which the LEA assessed more than 1.0 percent of
32 students in any subject for which assessments were administered
33 under §200.2(a) (1) in that school year using an alternate
34 assessment aligned with alternate academic achievement standards
35 unless the LEA has demonstrated to the State a higher prevalence
36 of students with the most significant cognitive disabilities than
37 were enrolled in assessed grades in the prior year; and

38 (C) Will not disproportionately assess students in any
39 particular subgroup under section 1111(c) (2) (A), (B), or (D) of
40 the Act with an alternate assessment aligned with alternate
41 academic achievement standards; and

42 (iv) Include a plan and timeline by which--

43 (A) The State will improve the implementation of its
44 guidelines under paragraph (d) of this section so that the State
45 meets the cap in paragraph (c) (2) of this section in each subject
46 for which assessments are administered under §200.2(a) (1) in
47 future school years;

1 (B) The State will take additional steps to support and
2 provide appropriate oversight to each LEA that the State
3 anticipates will assess more than 1.0 percent of its assessed
4 students in a subject in a school year using an alternate
5 assessment aligned with alternate academic achievement standards,
6 and any other LEA that the State determines will significantly
7 contribute to the State's exceeding the cap under paragraph
8 (c)(2) of this section, to ensure that only students with the
9 most significant cognitive disabilities take an alternate
10 assessment aligned with alternate academic achievement standards.
11 The State must describe how it will monitor and regularly
12 evaluate each such LEA to ensure that the LEA provides sufficient
13 training such that school staff who participate as members of an
14 IEP team or other placement team understand and implement the
15 guidelines established by the State under paragraph (d) of this
16 section so that all students are appropriately assessed; and

17 (C) The State will address any disproportionality in the
18 students taking an alternate assessment aligned with alternate
19 academic achievement standards as identified in paragraph
20 (c)(4)(ii)(A) of this section.

21 ~~(53d)~~ Reporting. A State must report separately to the
22 Secretary, under section 1111(h)(45) of the Act, the number and
23 percentage of ~~students~~ children with disabilities taking--

- 24 (i) Regular assessments described in §200.2;
- 25 (ii) Regular assessments with accommodations;
- 26 ~~(iii) Alternate assessments based on aligned with the grade-~~
27 ~~level academic achievement standards described in~~
28 ~~§200.1(c) section 1111(b)(1)(D) of the Act; and~~
- 29 ~~(iii) Alternate assessments based on modified academic~~
30 ~~achievement standards in school years prior to 2015-2016; and~~
- 31 ~~(v) Alternate assessments based on aligned with the alternate~~
32 ~~academic achievement standards described in §200.1 section~~
33 ~~1111(b)(1)(E) of the Act under paragraph (c) of this section.~~

34 **(6) A State may not develop, or implement for use under this**
35 **part, any alternate academic achievement standards for children**
36 **with disabilities that are not alternate academic achievement**
37 **standards for students with the most significant cognitive**
38 **disabilities that meet the requirements of section 1111(b)(1)(E)**
39 **of the Act.**

40 (7) For students with the most significant cognitive
41 disabilities, ~~assessed using~~ a computer-adaptive alternate
42 assessment aligned ~~to~~ with alternate academic achievement
43 standards ~~(AA-AAAS) under section 1111(b)(2)(D) of the Act must--~~

- 44 (i) Assess a student's academic achievement based on the
45 challenging State academic **content** standards for the grade in
46 which the student is enrolled;

1 (ii) Meet the requirements for alternate assessments aligned
2 with alternate academic achievement standards under this
3 paragraph; and

4 (iii) Meet the requirements in §200.2, except that the
5 alternate assessment need not measure a student's academic
6 proficiency based on the challenging State academic achievement
7 standards for the grade in which the student is enrolled and
8 growth toward those standards.

9 [NOTE FROM ED FOR MEMBERS OF THE NEGOTIATED RULEMAKING
10 COMMITTEE: The section below incorporates elements from prior
11 regulations found in §200.1(f) because those requirements relate
12 primarily to assessment and because the updated statute
13 incorporated many of these topics in 1111(b)(2).]

14 (d) State guidelines. If a State ~~adopts~~^{defines} alternate
15 academic achievement standards for students with the most
16 significant cognitive disabilities and administers an alternate
17 assessment aligned with those standards, ~~at~~ the State must--

18 (1) Establish and monitor implementation of clear and
19 appropriate guidelines for IEP teams to apply in determining, on
20 a case-by-case basis, which students with the most significant
21 cognitive disabilities will be assessed based on alternate
22 academic achievement standards;

23 (2) Provide to IEP teams a clear explanation of the
24 differences between assessments based on grade-level academic
25 achievement standards and those based on alternate academic
26 achievement standards, including any effects of State and local
27 policies on a student's education resulting from taking an
28 alternate assessment aligned with alternate academic achievement
29 standards, **such as how participation in such assessments may
30 delay or otherwise affect the student from completing the
31 requirements for a regular high school diploma;**

32 (3) Ensure that parents of students selected to be assessed
33 using an alternate assessment aligned with alternate academic
34 achievement standards under the State's guidelines in this
35 paragraph are informed that their child's achievement will be
36 measured based on alternate academic achievement standards, and
37 **how participation in such assessments may delay or otherwise
38 affect the student from completing the requirements for a regular
39 high school diploma;**

40 (4) Not preclude a student with the most significant
41 cognitive disabilities who takes an alternate assessment aligned
42 with alternate academic achievement standards from attempting to
43 complete the requirements for a regular high school diploma;

44 (5) Promote, consistent with requirements under the IDEA,
45 the involvement and progress of students with the most
46 significant cognitive disabilities in the general education
47 curriculum; **and**

1 (6) Ensure that it ~~identifies~~**describes** in its State plan--

2 ~~(i) The steps it has taken to incorporate the principles of~~
3 universal design for learning, to the extent feasible, in any
4 alternate assessments **aligned with alternate academic achievement**
5 **standards** that the State administers.; and

6 ~~(ii) How general and special education teachers and other~~
7 ~~appropriate staff receive training on administering the alternate~~
8 ~~assessments and make appropriate use of accommodations for~~
9 ~~students with disabilities eligible for accommodations on all~~
10 ~~assessments included in the State's system of student academic~~
11 ~~assessments; and~~

12 ~~(7) Develop, disseminate information on, and promote the use~~
13 ~~of appropriate accommodations consistent with paragraph (b) of~~
14 ~~this section to increase the number of children with disabilities~~
15 ~~under paragraph (a)(1) of this section who--~~

16 ~~(i) Participate in academic instruction and assessments for~~
17 ~~the grade level in which the student is enrolled; and~~

18 ~~(ii) Are tested based on challenging State academic~~
19 ~~standards for the grade level in which the student is enrolled.~~

20 (e) Definitions related to students with disabilities.

21 (1) The term "students with the most significant cognitive
22 disabilities" means [placeholder for definition based on sub-
23 committee deliberation]

24 (2) Consistent with 34 CFR 300.5, the term "assistive
25 technology device" means any item, piece of equipment, or product
26 system, whether acquired commercially off the shelf, modified, or
27 customized, that is used to increase, maintain, or improve the
28 functional capabilities of a child with a disability. The term
29 does not include a medical device that is surgically implanted,
30 or the replacement of such device.

31 ~~(b) Limited English learners~~**proficient students**. A State
32 must include ~~limited English proficient students~~ learners in its
33 academic assessments system as follows:

34 (1) In general. (i) Consistent with §200.2 and paragraphs
35 ~~(b) (2) and (b) (4) of this section, the~~ State must assess
36 ~~limited English learners~~ **proficient students** in a valid and
37 reliable manner that includes--

38 (A) ~~Reasonable~~**Appropriate** accommodations; and

39 (B) To the extent practicable, assessments in the language
40 and form most likely to yield accurate and reliable information
41 on what those students know and can do to determine the students'
42 mastery of skills in **academic content areas** ~~subjects other than~~
43 ~~English~~ until the students have achieved English language
44 proficiency.

45 (ii) ~~In its State plan, the~~ State must--

46 (A) Ensure that the use of appropriate accommodations under
47 this paragraph does not deny an English learner the opportunity

1 to participate in the assessment or afford any benefit from such
2 participation that is not equal to the benefit afforded to
3 students who do not use such accommodations;

4 (AB) Provide its definition for "languages other than
5 English that are present to a significant extent in the
6 participating student population," consistent with paragraph
7 (f)(iv) of this section, and identify the specific languages that
8 meet that definition ~~other than English that are present to a~~
9 ~~significant extent in the participating student population~~ served
10 by the SEA; and

11 (C) Identify any existing assessments in ~~native~~ languages
12 other than English, and specify for which grades and content
13 areas those assessments are available;

14 (BCD) Indicate the languages other than English that are
15 present to a significant extent in the participating student
16 population, as defined by the State, for which yearly student
17 academic assessments are not available and are needed; and

18 (iiiE) ~~The State--~~

19 ~~(A) Must~~ Describe how it will make every effort to develop
20 such assessments, at a minimum, ~~for~~ in languages **other than English**
21 that are present to a significant extent in the participating
22 student population; ~~and including by providing--~~

23 (1) The State's plan and timeline for developing such
24 assessments;

25 (2) A description of the process the State will use to
26 gather meaningful input on assessments in languages other than
27 English, collect and respond to public comment, and consult with
28 educators, parents and families of English learners, and other
29 stakeholders; and

30 (3) As applicable, an explanation of the reasons the State
31 has not been able to complete the development of such assessments
32 despite making every effort; and

33 (Biii) A State ~~M~~ay request assistance from the Secretary in
34 identifying linguistically accessible academic assessments that
35 are needed.

36 (iv) In determining which languages other than English are
37 present to a significant extent in a State's participating
38 student population, a State must, at a minimum--

39 (A) Ensure that its definition of "languages other than
40 English that are present to a significant extent in the
41 participating student population" encompasses at least the most
42 populous language other than English spoken by the State's
43 participating student population;

44 (B) Consider languages other than English that are spoken by
45 distinct populations of English learners, including English
46 learners who are migratory, English learners who were not born in

1 the United States, and Native American/Alaska Native English
2 learners;

3 (C) Consider languages other than English that are spoken by
4 a significant portion of the participating student population in
5 one or more of a State's LEAs as well as languages spoken by a
6 significant portion of the participating student population
7 across grade levels; and

8 (D) Consider languages other than English spoken by at least
9 thirty percent of English learners in the State.

10 (2) Assessing reading/language arts in English. (i) ~~Unless~~
11 ~~an extension of time is warranted under paragraph (b)(2)(ii) of~~
12 ~~this section, a~~A State must assess, using assessments written in
13 English, the achievement of ~~any limited English proficient~~
14 ~~student~~an English learner in meeting the State's
15 reading/language arts academic standards if the student has
16 attended schools in the United States, excluding Puerto Rico, for
17 three or more consecutive years.

18 (ii) An LEA may continue, for no more than two additional
19 consecutive years, to assess an ~~limited English learner~~
20 ~~proficient student~~ under paragraph ~~(b)(1)(e)(2)(i)(f)(1)(i)(B)~~ of
21 this section if the LEA determines, on a case-by-case individual
22 basis, that the student has not reached a level of English
23 language proficiency sufficient to yield valid and reliable
24 information on what the student knows and can do on
25 reading/language arts assessments written in English.

26 (iii) The requirements in paragraph ~~(b)(2)(i)~~ and (ii) of
27 this section do not permit an exemption from participating in the
28 State assessment system for ~~limited English learners proficient~~
29 ~~students~~.

30 (3) Assessing English proficiency. (i) ~~Unless a State~~
31 ~~receives an extension under paragraph (b)(3)(ii) of this section,~~
32 ~~the~~EachA State must--

33 (A) **Develop a uniform Statewide assessment of English**
34 **language** proficiency, including reading, writing, speaking, and
35 listening skills, ~~;~~ **and**

36 (B) ~~Require each LEA, beginning no later than the 2002-2003~~
37 ~~school year, to use such assessment to assess annually the~~
38 ~~English language proficiency, including reading, writing,~~
39 ~~speaking, and listening skills, of all students with~~
40 ~~limited English learners proficiency in schools inserved by the~~
41 LEA.

42 (ii) ~~The Secretary may extend, for one additional year, the~~
43 ~~deadline in assessment under paragraph (b)(3)(i) of this~~
44 ~~section must be--~~

45 (A) Aligned with the State's English language proficiency
46 standards required under section 1111(b)(1)(F) of the Act **and**

1 provide coherent and timely information about each student's
2 attainment of those standards; and

3 (B) Developed and used consistent with the requirements of
4 §200.2(b)(2), (b)(4), and (b)(5).

5 (iii) If a State develops a computer-adaptive assessment to
6 measure English language proficiency, the State must ensure that
7 the computer-adaptive assessment--

8 (A) Assesses a student's language proficiency, which may
9 include growth toward proficiency, in order to measure the
10 student's acquisition of English; and

11 (B) ~~Meets all the requirements for English language~~
12 ~~proficiency assessments in this paragraph; of section~~
13 ~~1111(b)(2)(J)(ii)(II) of the Act.~~

14 (iv) A State must provide appropriate accommodations that
15 are necessary to measure a student's English language proficiency
16 relative to the State's English language proficiency standards
17 under section 1111(b)(1)(F) of the Act for each English learner
18 covered under paragraph (a)(1) or (a)(3) of this section; and

19 (v) A State must provide for an alternate English language
20 proficiency assessment for each English learner covered under
21 paragraph (a)(2) of this section who cannot participate in the
22 assessment under paragraph (f)(3)(i) of this section even with
23 appropriate accommodations.

24 ~~if the State demonstrates that--~~

25 (A) ~~Full implementation is not possible due to exceptional~~
26 ~~or uncontrollable circumstances such as--~~

27 ~~(1) A natural disaster; or~~

28 ~~(2) A precipitous and unforeseen decline in the financial~~
29 ~~resources of the State; and~~

30 (B) ~~The State can complete implementation within the~~
31 ~~additional one-year period.~~

32 (4) Recently arrived limited English learners proficient
33 students. (i) (A) A State may exempt a recently arrived
34 ~~limited English learner proficient student~~, as defined in
35 paragraph ~~(fe)~~ (54) (iv) of this section, from one administration
36 of the State's reading/language arts assessment under §200.2.

37 (B) If the State does not assess a recently arrived
38 ~~limited English learner proficient student~~ on the State's
39 reading/language arts assessment, the State must count the year
40 in which the assessment would have been administered as the first
41 of the three years in which the student may take the State's
42 reading/language arts assessment in a native language consistent
43 with paragraph (fe)(2)(i) of this section ~~under section 1111(b)(3)(C)(*)~~
44 ~~of the Act.~~

45 (C) The State and its LEAs must report on State and
46 ~~district~~ local report cards required under section 1111(h) of the
47 Act the number of recently arrived ~~limited English learners~~

1 ~~proficient students~~ who are not assessed on the State's
2 reading/language arts assessment.

3 (D) Nothing in ~~this~~ paragraph ~~(b)(4)~~ of this
4 ~~section~~relieves an LEA from its responsibility under applicable
5 law to provide recently arrived ~~limited~~ English
6 ~~learners~~~~proficient students~~ with appropriate instruction to
7 ~~assistenable~~ them ~~in gaining to attain~~ English language
8 proficiency as well as ~~grade-level~~ content knowledge in
9 reading/language arts, ~~and mathematics, and science.~~

10 (ii) A State must assess the English language proficiency of
11 a recently arrived ~~limited~~ English ~~learner~~ ~~proficient student~~
12 pursuant to paragraph ~~(b)(3)~~ of this section.

13 (iii) A State must assess the mathematics ~~and science~~
14 achievement of a recently arrived ~~limited~~ English
15 ~~learner~~~~proficient student~~ pursuant to §200.2 with the frequency
16 described in §200.5(a).

17 (5iv) Definitions related to English learners.

18 (i) A "recently arrived ~~limited~~ English learner" ~~proficient~~
19 ~~student~~ is an ~~student with limited~~ English learner ~~proficiency~~ who
20 has ~~attended~~ ~~been enrolled~~ in schools in the United States for
21 less than twelve months.

22 (ii) The phrase "schools in the United States" includes only
23 schools in the 50 States and the District of Columbia.

24 (ge) Migratory and other mobile students. A State must
25 include migratory students, as defined in ~~¶~~title I, part C, of
26 the Act, and other mobile students in its academic assessment
27 system, even if those students are not included for
28 accountability purposes under section 1111(~~cb~~) (43) (~~FC~~) (~~*i~~) of the
29 Act.

30 (hd) Students experiencing homelessness. ~~(1)~~—A State must
31 include homeless students, as defined in section 725(2) of ~~¶~~title
32 VII, ~~§~~subtitle B of the McKinney-Vento Act, in its academic
33 assessment, ~~reporting,~~ and accountability systems, consistent
34 with section 1111(~~cb~~) (43) (~~FC~~) (~~*i~~) of the Act.

35 ~~(2)~~—~~The State is not required to disaggregate, as a separate~~
36 ~~category under §200.2(b)(10), the assessment results of the~~
37 ~~students referred to in paragraph (d)(1) of this section.~~

38 (Authority: 20 U.S.C. 1400 et seq. and 6311(b)(23), 29 U.S.C.
39 794; 42 U.S.C. 2000d-1, 11434a, and 12132; and 34 CFR 300.5)

1 **§200.8. Assessment reports.**

2 (a) Student reports. A State's academic assessment system
3 must produce individual student interpretive, descriptive, and
4 diagnostic reports that--

5 (1)(i) Include information regarding achievement on the
6 academic assessments under §200.2 measured against the State's
7 student academic achievement standards; and

8 (ii) Help parents, teachers, and principals to understand
9 and address the specific academic needs of students; and

10 (2) Are provided to parents, teachers, and principals--

11 (i) As soon as is practicable after the assessment is given;

12 (ii) In an understandable and uniform format, including an
13 alternative format (e.g., Braille or large print) upon request;
14 and

15 (iii) To the extent practicable, in a language that parents
16 can understand.

17 (b) Itemized score analyses for LEAs and schools. (1) A
18 State's academic assessment system must produce and report to
19 LEAs and schools itemized score analyses, consistent with
20 §200.2(b)(4), so that parents, teachers, principals, and
21 administrators can interpret and address the specific academic
22 needs of students.

23 (2) The requirement to report itemized score analyses in
24 paragraph (b)(1) of this section does not require the release of
25 test items.

26 (Authority: 20 U.S.C. 6311(b) (32) (B) (x) and (xii))

1 **§200.9. Deferral of assessments.**

2 (a) A State may defer the start or suspend the
3 administration of the assessments required under §200.2~~that were~~
4 ~~not required prior to January 8, 2002~~ for one year for each year
5 for which the amount appropriated for State assessment grants
6 under section 1002(b)~~6113(a)(2)~~ of the Act is less than~~the~~
7 ~~trigger amount \$369,100,000 in section 1111(b)(3)(D) of the Act.~~

8 (b) A State may not cease the development of the assessments
9 referred to in paragraph (a) of this section even if sufficient
10 funds are not appropriated under section ~~6113(a)(2)~~1002(b) of the
11 Act.

12 (Authority: 20 U.S.C. 1002(a); 6311(b) ~~(3)~~ (I); 7301b(a)(2))

1 **§200.10. Applicability of a State's academic assessments to**
2 **private schools and private school students.**

3 (a) Nothing in §200.1 or §200.2 requires a private school,
4 including a private school whose students receive services under
5 subpart A of this part, to participate in a State's academic
6 assessment system.

7 (b)(1) If an LEA provides services to eligible private
8 school students under subpart A of this part, the LEA must,
9 through timely consultation with appropriate private school
10 officials, determine how services to eligible private school
11 students will be academically assessed and how the results of
12 that assessment will be used to improve those services.

13 (2) The assessments referred to in paragraph (b)(1) of this
14 section may be the State's academic assessments under §200.2 or
15 other appropriate academic assessments.

16 (Authority: 20 U.S.C. 6320, 7886(a))