**UNSHADED text in this document shows areas of primary consideration for session 3 with respect to issue paper 6. These sections were identified as outstanding items during session 2. Gray shaded areas are not expected to require substantial additional conversation during discussion of issue paper 6.**

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

(a)(1) Each State, in consultation with its LEAs, must implement a system of high-quality, yearly student academic assessments that includes, at a minimum, academic assessments in mathematics, reading/language arts and science.

(2)(i) The State may also measure the achievement of students in other academic subjects in which the State has adopted challenging State academic standards.

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

(b) The assessments required under this section must--

(1)(i) Except as provided in §§200.3, 200.5(b), and 200.6(c) and section 1204 of the Act, be the same assessments used to measure the achievement of all students; and

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

(2)(i) Be designed to be valid and accessible for use by all students, including students with disabilities and English learners; and

(ii) Be developed, to the extent practicable, using the principles of universal design for learning. For the purposes of this section, the term “universal design **for learning**” means a scientifically valid framework for guiding educational practice that--

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

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

(3)(i)(A) Be aligned with the challenging State academic standards; and

(B) Provide coherent and timely information about student attainment of those standards and whether a student is performing at the grade level in which the student is enrolled;

(ii) (A)(1) Be aligned with the challenging State academic content standards; and

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

(B)(1) Measure student performance based on challenging State academic achievement standards that are aligned with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards consistent with section 1111(b)(1)(D) of the Act; or

(2) With respect to alternate assessments for students with the most significant cognitive disabilities, measure student performance based on alternate academic achievement standards defined by the State consistent with section 1111(b)(1)(E) of the Act that reflect professional judgment as to the highest possible standards achievable by such students to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or competitive, integrated employment, consistent with the purposes of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, as in effect on July 22, 2014; and

(4)(i) Be valid, reliable, and fair for the purposes for which the assessments are used; and

(ii) Be consistent with relevant, nationally recognized professional and technical testing standards;

(5) Be supported by evidence that--

(i) The assessments are of adequate technical quality--

(A) For each purpose required under the Act; and

(B) Consistent with the requirements of this section; and

(ii) Is made available to the public, including on the State’s Web site;

(6) Be administered in accordance with the frequency described in §200.5(a);

(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content, as defined by the State. These measures may--

(i) Include valid and reliable measures of student academic growth at all achievement levels to help ensure that the assessment results could be used to improve student instruction; and

(ii) Be partially delivered in the form of portfolios, projects, or extended performance tasks~~.~~;

(8) Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal or family beliefs and attitudes, except that this provision does not preclude the use of--

(i) Constructed-response, short answer, or essay questions; or

(ii) Items that require a student to analyze a passage of text or to express opinions;

(9) Provide for participation in the assessments of all students in the grades assessed consistent with §§200.5(a) and 200.6;

(10) At the State’s discretion, be administered through--

(i) A single summative assessment; or

(ii) Multiple statewide interim assessments during the course of the academic year that result in a single summative score that provides valid, reliable, and transparent information on student achievement and, at the State’s discretion, student growth, consistent with paragraph (b)(4) of this section;

(11) Consistent with section 1111(b)(2)(B)(xi) and section 1111(h)(1)(C)(ii) of the Act, enable results to be disaggregated within each State, LEA, and school by--

(i) Gender;

(ii) Each major racial and ethnic group;

(iii) Status as an English learner as defined in section 8101(20) of the Act;

(iv) Status as a migratory child as defined in section 1309(3) of title I, part C of the Act;

(v) Children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) as compared to all other students;

(vi) Economically disadvantaged students as compared to students who are not economically disadvantaged;

(vii) **Status as a** homeless **child or youth** as defined in section 7**25**(2) of title VII, subtitle B of the McKinney-Vento Homeless Assistance Act, as amended;

(viii) Status as a child in foster care. “Foster care” means 24-hour substitute care for children placed away from their parents and for whom the agency under title IV-E of the Social Security Act has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, tribal, or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made; and

(ix) Status as a student with a parent who is a member of the Armed Forces on active duty, where the terms “Armed Forces” and “active duty” have the same meanings given them in 10 U.S.C. 101(a)(4) and 101(d)(1);

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

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

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

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

(ii) May measure a student’s academic proficiency and growth using items above or below the student’s grade level.

(2) If a State administers a computer-adaptive assessment, the determination under paragraph (b)(3)(i)(B) of this section of a student’s academic proficiency for the grade in which the student is enrolled must be reported on all reports required by §200.8 and section 1111(h) of the Act.

(d) A State must submit evidence for peer review under section 1111(a)(4) of the Act that its assessments under this section and §§200.3, 200.4, 200.5(b), 200.6(c), 200.6(f)(1) and (3), and 200.6(g) meet all applicable requirements.

(e) Information provided to parents under section 1111(b)(2) of the Act must--

(i)  Be in an understandable and uniform format;

(ii)  Be, to the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and

(iii)  Be, upon request by a parent who is an individual with a disability as defined by the Americans with Disabilities Act (ADA) provided in an alternative format accessible to that parent.

(Authority: 10 U.S.C. 101(a)(4) and (d)(5), 20 U.S.C. 1003(24), 6311(a)(4), 6311(b)(2~~3~~), 6399(3), 42 U.S.C. 11434a; and 45 CFR 1355(a))

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

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

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

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

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

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

(i) Is aligned with the challenging State academic standards;

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

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

(A) The coverage of academic content;

(B) The difficulty of the assessment;

(C) The overall quality of the assessment; and

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

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

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

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

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

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

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

(i) Ensure that use of appropriate accommodations under §200.6(b) and (f)(1) does not deny any student the opportunity to participate in the assessment or afford any benefit from such participation that is not equal to the benefit afforded to students who do not use such accommodations; and

(ii) Submit evidence to the Secretary in accordance with the requirements for peer review under section 1111(a)(4) of the Act demonstrating that any such assessment meets the requirements ofthis section; and

(3) Approve an LEA’s request to use a locally selected, nationally recognized high school academic assessment that meets the requirements of this section.

(c) LEA applications.

(1) Before an LEA requests approval from the State to use a locally selected, nationally recognized high school academic assessment, the LEA must--

(i) Notify all parents of high school students it serves--

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

(B) How parents may provide meaningful input regarding the LEA’s request; and

(C) Of any effect of such request on the instructional program in the LEA; and

(ii) Provide an opportunity for meaningful consultation to all public charter schools whose students would be included in such assessments.

(2) As part of requesting approval to use a locally selected, nationally recognized high school academic assessment, an LEA must--

(i) Update its LEA plan under section 1112 or section 8305 of the Act, including to describe how the request was developed consistent with all requirements for consultation under sections 1112 and 8538 of the Act.

(ii) If the LEA is a charter school under State law, provide an assurance that the use of the assessment is consistent with State charter school law and it has consulted with the authorized public chartering agency.

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

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

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

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

(~~6~~5) The notices to parents under this paragraph must be consistent with §200.2(e).

(d) Definition*.* “Nationally recognized high school academic assessment” means an assessment of high school students’ knowledge and skills that is administered in multiple States and is accepted by institutions of higher education in those or other States for the purposes of entrance or placement into courses in post~~-~~secondary education or training programs.

(Authority: 20 U.S.C. 6311(b)(2)(H), 6312(a), 7918; 29 U.S.C. 794; 42 U.S.C. 2000d-1, 12102, and 12132)

**§200.4. State law exception.**

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

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

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

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

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

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

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

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

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

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

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

(ii) For purposes of this section—

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

(B) Have comparable validity and reliability with respect to groups of students described in section 1111(c)(2) of the Act; and

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

(3) Be able to aggregate, with confidence, data from local assessments to make accountability determinations under section 1111(c) of the Act.

(Authority: 20 U.S.C. 6311(b)(2)(E))

**§200.5. Assessment administration.**

(a) Frequency. (1)

A State must administer the assessments required under §200.2 annually as follows:

(i) With respect to both the reading/language arts and mathematics assessments--

(A) In each of grades 3 through 8; and

(B) At least once in grades 9 through 12.

(ii) With respect to science assessments, not less than one time during **each of**--

(A) Grades 3 through 5;

(B) Grades 6 through 9; and

(C) Grades 10 through 12.

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

(b) Middle school mathematics exception. A State that administers an end-of-course mathematics assessment to meet the requirements under paragraph (a)(1)(i)(B) of this section may exempt an eighth-grade student from the mathematics assessment typically administered in eighth grade under paragraph (a)(1)(i)(A) of this section if-–

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

(2) The student’s performance on the high school assessment is used in the year in which the student takes the assessment for purposes of measuring academic achievement under section 1111(c)(4)(B)(i) of the Act and participation in assessments under section 1111(c)(4)(E) of the Act;

(3) In high school-–

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

(A) Is more advanced than the assessment the State administers under paragraph (a)(1)(i)(B) of this section; and

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

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

(4) The State describes in its State plan its strategies to ensure that all students in the State have the opportunity to be prepared for and to take advanced mathematics coursework in middle school.

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

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

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

(a) Students with disabilities in general. (1) A State must include students with disabilities in all assessments under section 1111(b)(2) of the Act, with appropriate accommodations consistent with paragraphs (b), (f)(1), and (f)(3)(iv) of this section. For purposes of this section, students with disabilities, collectively, are--

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

(ii) Students with the most significant cognitive disabilities who are identified by their individualized education program (IEP) team~~s~~ from among the students in paragraph (a)(1)(i) of this section, consistent with the definition in paragraph (e)(1) of this section; and

(iii) Students with disabilities covered under other acts, including--

(A) Section 504 of the Rehabilitation Act of 1973, as amended; and

(B) Title II of the ADA.

(2)(i) A student with a disability under paragraph (a)(1)(i) or (iii) of this section must be assessed with an assessment aligned with the challenging State academic standards for the grade in which the student is enrolled.

(ii) If a State has adopted alternate academic achievement standards permitted under section 1111(b)(1)(E) of the Act for students with the most significant cognitive disabilities, a student with the most significant cognitive disabilities under paragraph (a)(1)(ii) of this section may be assessed with--

(A) The general assessment under paragraph (a)(2)(i) of this section; or

(B) An alternate assessment under paragraph (c) of this section aligned with the challenging State academic content standards for the grade in which the student is enrolled and the State’s alternate academic achievement standards.

(b) Appropriate accommodations*.* (1) A State's academic assessment system must provide, for each student with a disability under paragraph (a) of this section, the appropriate accommodations, such as interoperability with, and ability to use, assistive technology devices consistent with nationally recognized accessibility standards, that are necessary to measure the academic achievement of the student consistent with paragraph (a)(2) of this section, as determined by--

(i) For each student under paragraphs (a)(1)(i) and (ii) of this section, the student’s IEP team;

(ii) For each student under paragraph (a)(1)(iii)(A) of this section, the student's placement team; or

(iii) For each student under paragraph (a)(1)(iii)(B) of this section, the individual or team designated by the LEA to make these decisions.

(2) A State must--

(i) Develop, disseminate information to, at a minimum, schools and parents, and promote the use of appropriate accommodations to ensure that all students with disabilities are able to participate in academic instruction and assessments consistent with paragraph (a)(2) of this section; and

(ii) Ensure that general and special education teachers, paraprofessionals, specialized instructional support personnel, and other appropriate staff receive necessary training to administer assessments and know how to administer assessments, including, as necessary, alternate assessments under paragraphs (c) and paragraph (f)(3)(v) of this section, and know how to make use of appropriate accommodations during assessment for all students with disabilities.

(3) A State must ensure that the use of appropriate accommodations under this paragraph does not deny a student with a disability the opportunity to participate in the assessment or afford any benefit from such participation that is not equal to the benefit afforded to students who do not use such accommodations.

(c) Alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities*.*  (1) If a State has **adopted** alternate academic achievement standards permitted under section 1111(b)(1)(E) of the Act for students with the most significant cognitive disabilities, the State must measure the achievement of those students with an alternate assessment that--

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

(ii) Yield**s** results **for** those students relative to the alternate academic achievement standards**; and**

**(iii) At the State’s discretion, provides** valid and reliable **measures of student growth** at all alternate academic achievement levels to help ensure that the assessment results can be used to improve student instruction.

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

(3) A State must-–

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

(ii) Require that an LEA submit information justifying the need of an LEA to assess more than 1.0 percent of its assessed students with such an alternate assessment;

(iii) Provide appropriate oversight, as determined by the State, of an LEA that **is required to submit information to the State**; and

(iv) Make the information submitted by an LEA under paragraph (c)(3)(ii) of this section publicly available, provided that such information does not reveal personally identifiable information about an individual student.

(4) If a State anticipates that it will exceed the cap under paragraph (c)(2) of this section with respect to any subject for which assessments are administered under §200.2(a)(1) in any school year, the State may request that the Secretary waive the cap for the relevant subject, pursuant to section 8401 of the Act, for one year. Such request must--

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

(ii) Provide State-level data, from the current or previous school year, to show--

(A) The number and percentage of students in each subgroup of students defined in section 1111(c)(2)(A), (B), and (D) of the Act who took the alternate assessment aligned with alternate academic achievement standards; and

(B) The State has measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup under section 1111(c)(2)(C) of the Act who are enrolled in grades for which the assessment is required under §200.5(a);

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

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

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

(C) Will address any disproportionality in the number and percentage of students in any particular subgroup under section 1111(c)(2)(A), (B), or (D) of the Act taking an alternate assessment aligned with alternate academic achievement standards;

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

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

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

(C) The State will address any disproportionality in the number and percentage of students taking an alternate assessment aligned with alternate academic achievement standards as identified through the data provided in accordance with paragraph (c)(4)(ii)(A) of this section; and

(v) If the State is requesting to extend a waiver for an additional year, it must meet the requirements in paragraph (c)(4)(i) through (iv) and demonstrate progress towards achieving each component of the prior year’s plan and timeline required under paragraph (c)(4)(iv) of this section.

(5) Reporting*.*  A State must report separately to the Secretary, under section 1111(h)(5) of the Act, the number and percentage of children with disabilities under paragraph (a)(1)(i) and (ii) of this section taking--

(i) General assessments described in §200.2;

(ii) General assessments with accommodations; and

(iii) Alternate assessments aligned withalternate academic achievement standards under paragraph (c) of this section.

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

(7) For students with the most significant cognitive disabilities, a computer-adaptive alternate assessment aligned with alternate academic achievement standards must--

(i) Assess a student’s academic achievement based on the challenging State academic content standards for the grade in which the student is enrolled;

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

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

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

(d) State guidelines. If a State **adopts** alternate academic achievement standards for students with the most significant cognitive disabilities and administers an alternate assessment aligned with those standards, the State must--

(1) Establish, consistent with section 612(a)(16)(C) of the IDEA, and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining, on a case-by-case basis, which students with the most significant cognitive disabilities will be assessed based on alternate academic achievement standards;

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

(3) Ensure that parents of students selected to be assessed using an alternate assessment aligned with alternate academic achievement standards under the State's guidelines in this paragraph are informed that their child's achievement will be measured based on alternate academic achievement standards, and **how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma** consistent with §200.2(e);

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

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

(6) Ensure that it **describes** in its State plan the steps it has taken to incorporate the principles of universal design for learning, to the extent feasible, in any alternate assessments **aligned with alternate academic achievement standards** that the State administers; and

(7) Develop, disseminate information on, and promote the use of appropriate accommodations consistent with paragraph (b) of this section to ensure that a student with significant cognitive disabilities who does not meet the criteria in paragraph (a)(1)(ii)–-

(i) Participates in academic instruction and assessments for the grade level in which the student is enrolled; and

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

(e) Definitions related to students with disabilities*.*

(1) The term “student with the most significant cognitive disabilities” means a child with a disability or disabilities as defined under section 602(3) of the IDEA that significantly impact intellectual functioning and adaptive behavior, and who requires extensive, direct individualized instruction and substantial supports, as determined by the IEP team, except that –-

(i) The identification of a student as having a particular disability as defined in the IDEA must not determine whether a student is a student with the most significant cognitive disabilities; and

(ii) A student with the most significant cognitive disabilities must not be identified solely on the basis of the student’s previous low academic achievement, or status as an English learner, or the student’s previous need for accommodations to participate in general State or districtwide assessments.

(2) The term “adaptive behavior” means behavior essential for someone to live independently and to function safely across three domains of daily life skills: conceptual (e.g., language, functional academics, self-direction, money management, and time concepts); social (e.g., interpersonal skills, responsibility, self-esteem, wariness/naïvete, follow rules, etiquette, and social problem solving); and practical (e.g., activities of daily living, occupational skills, safety, healthcare, and travel).

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

(f) English learners*.*  A State must include English learners in its academic assessments required under §200.2 as follows:

(1) In general*.*  (i) Consistent with §200.2 and paragraphs (f)(2) and (f)(4) of this section, a State must assess English learners in a valid and reliable manner that includes--

(A) **Appropriate** accommodations with respect to a student’s status as an English learner and, if applicable, the student’s status under paragraph (a) of this section; and

(B) To the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in academic content areas until the students have achieved English language proficiency.

(ii) To meet the requirements under (f)(1)(i), the State must, in its State plan--

(A) Ensure that the use of appropriate accommodations under this paragraph and, if applicable, under paragraph (b) of this section does not deny an English learner the opportunity to participate in the assessment or afford any benefit from such participation that is not equal to the benefit afforded to students who do not use such accommodations;

(B) Provide its definition for “languages other than English that are present to a significant extent in the participating student population,” consistent with paragraph (f)(1)(iv) of this section, and identify the specific languages that meet that definition;

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

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

(E) Describe how it will make every effort to develop assessments, at a minimum, in languages **other than English** that are present to a significant extent in the participating student population including by providing--

(1) The State’s plan and timeline for developing such assessments, including a description of how it met the requirements of paragraph (f)(1)(iv) of this section;

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

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

(iii) A State may request assistance from the Secretary in identifying linguistically accessible academic assessments that are needed.

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

(A) Ensure that its definition of “languages other than English that are present to a significant extent in the participating student population” encompasses at least the most populous language other than English spoken by the State’s participating student population;

(B) Consider languages other than English that are spoken by distinct populations of English learners, including English learners who are migratory, English learners who were not born in the United States, and English learners who are Native Americans or Alaska Natives; and

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

(2) Assessing reading/language arts in English*.*  (i) A State must assess, using assessments written in English, the achievement of an English learner in meeting the State's reading/language arts academic standards if the student has attended schools in the United States, excluding Puerto Rico and, if applicable, students in Native American or Alaska Native language immersion schools or programs consistent with paragraph (g) of this section, for three or more consecutive years.

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

(iii) The requirements in paragraph (f)(2)(i) and (ii) of this section do not permit an exemption from participating in the State assessment system for English learners.

(3) Assessing English proficiency*.*  (i) Each State must--

(A) Develop a uniform statewide assessment of English language proficiency, including reading, writing, speaking, and listening skills; and

(B) Require each LEA to use such assessment to assess annually the English language proficiency, including reading, writing, speaking, and listening skills, of all English learners in schools served by the LEA.

(ii) The assessment under paragraph (3)(i) of this section must be–-

(A) Aligned with the State’s English language proficiency standards under section 1111(b)(1)(F) of the Act and provide coherent and timely information about each student’s attainment of those standards, including information provided to parents consistent with §200.2(e); and

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

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

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

(B) Meets the requirements for English language proficiency assessments in paragraph (f) of this section.

**(iv) A State must provide appropriate accommodations that are necessary to measure a student’s English language proficiency relative to the State’s English language proficiency standards under section 1111(b)(1)(F) of the Act for each English learner covered under paragraph (a)(1)(i) or (a)(1)(iii) of this section.**

**(v) A State must provide for an alternate English language proficiency assessment for each English learner covered under paragraph (a)(1)(ii) of this section who cannot participate in the assessment under paragraph (f)(3)(i) of this section even with appropriate accommodations.**

(4) Recently arrived English learners*.*  (i)(A) A State may exempt a recently arrived English learner, as defined in paragraph (f)(5)(i) of this section, from one administration of the State's reading/language arts assessment under §200.2.

(B) If the State does not assess a recently arrived English learner on the State's reading/language arts assessment, the State must count the year in which the assessment would have been administered as the first of the three years in which the student may take the State's reading/language arts assessment in a native language consistent with paragraph (f~~e~~)(2)(i) of this section.

(C) The State and its LEAs must report on State and local report cards required under section 1111(h) of the Act the number of recently arrived English learners who are not assessed on the State's reading/language arts assessment.

(D) Nothing in this paragraph relieves an LEA from its responsibility under applicable law to provide recently arrived English learners with appropriate instruction to enable them to attain English language proficiency as well as grade-level content knowledge in reading/language arts, mathematics, and science.

(ii) A State must assess the English language proficiency of a recently arrived English learner pursuant to paragraph (f)(3) of this section.

(iii) A State must assess the mathematics and science achievement of a recently arrived English learner pursuant to §200.2 with the frequency described in §200.5(a).

(5) Definitions related to English learners.

(i) A “recently arrived English learner” is an English learner who has been enrolled in schools in the United States for less than twelve months.

(ii) The phrase “schools in the United States” includes only schools in the 50 States and the District of Columbia.

(g) Students in Native American or Alaska Native language immersion schools or programs. (1) Except as provided in paragraph (g)(2) of this section, a State is not required to assess, using assessments written in English, student achievement in meeting the challenging State academic standards in reading/language arts for a student who is enrolled in a school or program that provides instruction primarily in a Native American or Alaska Native language if--

(i) The State provides an assessment of reading/language arts in the Native American or Alaska Native language to all students in the school or program, consistent with the requirements of §200.2;

(ii) The State submits the assessment of reading/language arts in the Native American or Alaska Native language for peer review as part of its State assessment system, consistent with §200.2(d); and

(iii) For an English learner, as defined in section 8101(2)(C)(ii) of the Act, the State continues to assess the English language proficiency of such English learner, using the annual English language proficiency assessment required under §200.6(f)(3), and provides appropriate services to enable him or her to attain proficiency in English.

(2)  Notwithstanding §200.2(f)(2), the State must assess under 200.5(a)(1)(i)(A), using assessments written in English, the achievement of each student enrolled in such a school or program in meeting the challenging State academic standards in reading/language arts by no later than the end of the eighth grade.

(h) Definition. For the purpose of this section, the term “Native American” means “an Indian, Native Hawaiian, or Native American Pacific Islander.”

(i) Highly mobile students. The State must include in its assessment system the following highly mobile student populations as defined in §200.2(b)(11):

(1) Students with status as a migratory child.

(2) Students with status as a homeless child or youth.

(3) Students with status as a child in foster care.

(4) Students with status as a student with a parent who is a member of the Armed Forces on active duty.

(Authority: 20 U.S.C. 1400 et seq. and 6311(b)(2), 25 U.S.C. 2902, 29 U.S.C. 794; 42 U.S.C. 2000d-1, 11434a, and 12132; and 34 CFR 300.5)

**§200.8. Assessment reports.**

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

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

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

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

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

(ii) In an understandable and uniform format consistent with §200.2(e).

(b) Itemized score analyses for LEAs and schools*.*  (1) A State's academic assessment system must produce and report to LEAs and schools itemized score analyses, consistent with §200.2(b)(13), so that parents, teachers, principals, and administrators can interpret and address the specific academic needs of students.

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

(Authority: 20 U.S.C. 6311(b)(2)(B)(x) and (xii))

**§200.9. Deferral of assessments.**

(a) A State may defer the start or suspend the administration of the assessments required under §200.2 for one year for each year for which the amount appropriated for State assessment grants under section 1002(b) of the Act is less than $369,100,000.

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

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

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

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

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

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

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