

programs are designed to provide school-level rather than student-level estimates of performance. At a minimum, the commenter recommends: adding language in § 200.4(b)(9) requiring that individual student reports include estimates of measurement error for the scores and any limitations of the results to permit accurate interpretation; adding language in § 200.4(b)(10) that reports of disaggregated data should be modified when the results would be unreliable or invalid due to inadequate numbers of students in the categories; or permitting a school to report annual results in a three-year rolling average to reflect that estimates from individual years contain too much error to be interpreted in isolation.

*Discussion:* Section 200.5(a)(2)(iii)(C) of the regulations clarifies that disaggregated data should be reported to the public only when those data would be statistically sound. It is appropriate for a State to have considerable flexibility in determining the content of its assessment reports so long as those reports conform with the requirements of the law.

*Changes:* None.

*Comment:* One commenter described some of the difficulties involved in disaggregating data by economically disadvantaged children: the definition is subject to various interpretations; schools currently do not collect these data in disaggregated form; collection of such data would be very difficult; and current USDA guidelines limit the use of individual student eligibility free and reduced price lunch data to USDA purposes only. Another commenter, reinforcing this position, suggested that the regulations provide as much flexibility as possible regarding disaggregation of data by poverty status.

*Discussion:* The Secretary recognizes that there are difficulties involved in complying with this requirement. However, the need to determine how well Title I is assisting poor children to meet challenging standards is acute.

*Changes:* None.

*Comment:* One commenter suggested deleting the phrase “in the grades being assessed” from § 200.4(b)(7)(i) of the regulations on the grounds that it may cause unnecessary problems for students who are placed in “ungraded” classes, or who have disabilities and are not in the age-appropriate grade. According to the commenter, this phrase is not necessary to clarify that students in all grades need not be assessed and might create perverse incentives for schools wanting to exclude students from assessments. Another commenter suggested that § 200.4(b)(7)(i) of the regulations be

modified to read “participation in the assessment of all students, including students served under this subpart, in the grades being assessed.”

*Discussion:* Inclusion of the phrase “in the grades being assessed” in § 200.4(b)(7)(i) of the regulations is necessary to clarify that assessments used for Title I purposes do not have to assess all students in a school or all students served by Title I, but only those students in the specific grades being assessed. Within the grades being assessed, however, students being served under Title I must be included in the assessment.

*Changes:* None.

*Comment:* One commenter stated that the requirement in § 200.4(b) of the regulations that the “same assessments be used to measure the performance of all children” should be relaxed to permit appropriate modifications for children with diverse learning needs. The commenter recommended regulatory language stating that “reasonable adaptations may require modifications in item format, item content, test structure, administrative procedures and time limits that result in a different test form and/or procedure.” The commenter would also require those modifications to be described and the validity and reliability of those assessments estimated and reported. Another commenter suggested that the regulations state that all students, including those who are limited English proficient, have a disability, or otherwise might not always be included in State and local assessment systems, be included under Title I assessment requirements, with appropriate modifications.

*Discussion:* Section 1111(b)(3)(A) of Title I and § 200.4(b)(1) of the regulations make clear that assessments used for Title I purposes must be the same assessments used to measure the performance of all children, if the State measures the performance of all children. These provisions remedy the situation under Chapter 1, in which a separate testing system was often used to assess only Chapter 1 participants. Section 200.4(b)(7)(i) of the regulations makes clear that State assessments must provide for the participation of *all* students in the grades being assessed. Section 200.4(b)(7)(ii) further clarifies that *all* students includes students with diverse learning needs. However, it also makes clear that reasonable adaptations and accommodations must be made for students with diverse learning needs so that the State’s assessment measures the achievement of those students relative to the State’s content and performance standards. Moreover, under

§ 200.4(b)(7)(iii), children with limited English proficiency must be assessed, to the extent practicable, 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 subjects other than English. The Secretary believes these provisions effectively address the commenters’ concerns.

*Changes:* None.

*Comment:* Several commenters focused specifically on § 200.4(b)(7)(iii) concerning the assessment of limited English proficient children. One commenter recommended modifying this section to make clear that the State must make every effort to use or develop linguistically accessible assessment measures and develop appropriate modifications to test formats and administration procedures for LEP students assessed in English. Another commenter recommended deleting “to the extent practicable” from § 200.4(b)(7)(iii)(A) to ensure the assessment of all students without regard to primary language.

*Discussion:* The Secretary believes that § 200.4(b)(7) of the regulations, which replicates, by and large, the language in section 1111(b)(3)(F) of Title I is clear in its requirements that all students participate in the assessments, that reasonable adaptations and accommodations be provided where necessary, and that children with limited English proficiency be assessed, to the extent practicable, 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 subjects other than English.

*Changes:* None.

*Comment:* Several commenters expressed concerns about the addition of the phrase “to meet this requirement” in § 200.4(b)(7)(iii)(B) of the regulations. To some, it suggests that States can meet the requirement that they include LEP students in their assessment by making every effort to use linguistically accessible assessment measures even though these are two distinct and important provisions. To another commenter, the provision gives the impression that assessment of LEP students is required only when assessments are available in the students’ native languages. Recommendations included either deleting the phrase, or substituting the words “in meeting” for “to meet” in § 200.4(b)(7)(iii)(B).

*Discussion:* The Secretary agrees with the commenter that, as proposed, the provision did not make clear the