

# The Legislative History of Alternate Assessments

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## **The Legislative History of Alternate Assessments**

Alternate assessments have received increased attention since the passage of NCLB (No Child Left Behind) legislation in 2001 and particularly since the United States Education Department (USED) released regulations governing the development of alternate achievement standards for students with the most significant cognitive disabilities in 2003. However, alternate assessments have a legislative basis that begins with the authorization of the Rehabilitation Act of 1973. This brief will introduce the legislative underpinnings of the current alternate assessment landscape with particular emphasis on current requirements established in NCLB and its accompanying regulations and policy guidance.

Although including students with disabilities in assessment programs was not officially legislated until the 1997 passage of the Individuals with Disabilities Education Act (IDEA), earlier legislation established the environment that led to IDEA and alternate assessments. The earliest legislation that impacted students with disabilities (SWD), and ultimately alternate assessments, was the Rehabilitation Act of 1973, specifically section 504. This coverage of 504 was expanded by the Americans with Disabilities Act of 1990; the Education of Handicapped Children Act of 1975 that became IDEA 1990, 1997, and 2004; and the 2001 reauthorization of the Elementary and Secondary Education Act better known as NCLB. This brief will inventory and briefly discuss the aspects of these bills relevant to education, SWD, and the development of alternate assessments.

Section 504 of the Rehabilitation Act of 1973 is a broad civil rights legislation primarily intended to provide access to jobs and training for disabled adults. The legislation defines a person with disabilities as an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. However, defining “substantially limits” is left to states and institutions. The legislation, broadly interpreted and applied to education, prohibits states from denying participation or benefits from services, providing an opportunity that is unequal to that afforded to others, providing a benefit that is less effective, or providing benefits or services that are different or separate unless that is required to ensure that the benefits or services are equally effective. The language in 504 does not tie its anti-discrimination language to education, much less testing. The link to education comes through the Rehabilitation Act’s funding provisions. Compliance with Section 504’s anti-discrimination language, among other requirements in the legislation, was mandatory in order for state programs and institutions that received federal funding to continue to receive such funding. This included federal monies given to state and local education agencies, as well as schools receiving disbursements of that money or direct federal funding.

Disability as defined in Section 504 does not require that an individual's impairment limit learning potential in order to be covered. Any impairment that may impede access to learning is also covered. Addressing impairments that limit learning and access to learning resulted in classroom accommodations that allow students with disabilities access to educational settings and materials, which eventually impacts whether and how students participate in standardized testing programs. Prior to 504, most students with disabilities were not included in the public school system because schools were under no obligation to provide services to meet their needs. Under 504, recipients of federal funds are responsible for identifying and individually evaluating students to ascertain their specific needs in addition to any aptitude testing. One of the most significant requirements to emerge from Section 504 regulations is that institutions funded from USED or Title II of the American Disabilities Act (ADA) must provide a free and appropriate public education (FAPE) regardless of the nature or severity of a student's disability. Compliance with Section 504 is enforced by the Office of Civil Rights within USED.

In 1990, the ADA was passed to extend the coverage provided by Section 504 to employment, public and private educational institutions, public transportation and telecommunications regardless of whether the businesses, organizations, or institutions involved receive federal funding. Disability is defined in the ADA to mirror its definition in Section 504 because the ADA was simply intended to extend the anti-discrimination coverage offered by Section 504 to institutions beyond those receiving federal funding. As a result of the ADA, standards for accessible design were created that led to widespread implementation of curb cuts, automatic doors, wheelchair lifts and ramps, and Braille was added in elevators, office buildings, and on telecommunications devices. The ADA's impact in education primarily underscores the requirements set forth in Section 504. The ADA legislates significant changes but does not provide funding for implementation, another similarity to 504.

In 1975, the Education of All Handicapped Children Act (EAHCA) was passed into law, which more clearly articulates the anti-discrimination components of Section 504 pertaining to education and defines the rights of parents of students with disabilities to pursue public education for their children and the rights of SWD to receive it. This act specifically guarantees a FAPE for all handicapped children between the ages of 5 and 21 in the least restrictive environment at no cost to the parents. This act instituted IEP (Individualized Education Program), since it defines "appropriate public education" as regular and special education programs designed to meet the particular needs of each child.

EAHCA was the precursor to IDEA, the Individuals with Disabilities Education Act, which was passed in 1990. IDEA underwent significant revisions in 1997, bringing it closer to what it is today. Prior to IDEA 1997, legislation did not specifically require SWD to participate in state and district assessments; it only prevented them from being excluded on the basis of their disability. In addition to specifically requiring SWD be included in state and district-wide assessments, IDEA 1997 requires states to develop guidelines for SWD's participation in regular and alternate assessments and guidelines on

accommodations and modifications to assist IEP teams with assessment decisions. IDEA 1997 also requires states to develop the alternate assessments. The legislation and accompanying regulations clearly state that alternate assessments should be aligned with a state's general curriculum standards, that participation in the alternate assessment should not preclude students from any benefits available to students participating in the regular assessment, and that states should establish high performance standards and goals, as consistent as possible with the standards set for all students, and report progress on meeting them.

Apart from assessment-related regulations, IDEA 1997 also introduces 13 specific disability categories, defines children eligible under IDEA as those with educational disabilities that require individualized services from specially trained teachers, and provides federal funding to elementary and secondary schools to implement its requirements. IDEA was reauthorized in 2004 with the purpose of clearly aligning its language with NCLB, including references to alternate and modified achievement standards. One of the most significant changes in IDEA 2004 is the method for determining if a student has a disability that qualifies for IDEA protection. The 2004 legislation removes the requirement that the severe discrepancy model be used to identify eligible students and encourages states to use a research-based method. This language parallels NCLB.

The 2001 reauthorization of the elementary and secondary education act is NCLB, which furthers the inclusion requirements of IDEA by requiring 95 percent of all students, and 95 percent of students in particular sub-groups, to participate in a single statewide accountability system. NCLB includes more detailed requirements for creating appropriate assessments, defining performance, and holding SWD accountable for grade-level content. Additionally, NCLB includes the performance and growth trajectory of SWD in determining whether states are compliant with NCLB. School sanctions for non-compliance include losing federal funding and Title I money, providing choice, and requiring schools to restructure.

NCLB regulatory guidance has provided more specific information on testing students with disabilities, including authorizing the development of alternate achievement standards and their use for making AYP decisions for students with the most significant cognitive disabilities (34 CFR, Part 200). The non-regulatory guidance provides some direction for developing these alternate achievement standards, aligning them with grade-level standards, and developing assessments for holding students accountable to them. According to the non-regulatory guidance, alternate assessments can either be aligned with grade-level achievement standards or alternate achievement standards that are set using a professionally recognized method. Students taking alternate assessments must be assessed in the same subjects and grades as all other students, and the test content, while less broad and complex than the standard assessment, should not focus on functional skills or solely on IEP goals.

Before SWD became involved in the world of large-scale assessments, they first had to gain access to the education system. Early legislation, such as Section 504, the ADA, and EAHCA, mandate participation by legislating students' rights to FAPE in Least Restrictive Environment (LRE). Once SWD became participants in the education system, they became included in the accountability movement with IDEA 1997, and more fully so with NCLB. The most significant impact of NCLB on alternate assessments, beyond that of IDEA, is that it holds schools accountable for the participation and performance of SWD and requires technically sound tests that measure aspects of the general education curriculum. IDEA 1997 mandates the development of alternate assessments and also recommends training SWD for employment and independent living, giving rise to alternate assessments that measured trainable behaviors and life skills. IDEA creates the requirement for alternate assessments and federal reporting on student performance. But IDEA 1997, coupled with NCLB and further enhanced by the reauthorization of IDEA in 2004, created the need for much more complex alternate assessments aligned with grade-level content that are being created today.