

NASP LEGISLATIVE UPDATE
December 24, 2003

FINAL NCLB ASSESSMENT REGS
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HAPPY HOLIDAYS FROM NASP!

I. FINAL NCLB ASSESSMENT REGS

On December 9, 2003, the U.S. Department of Education issued its final regulation for assessing students with disabilities under the No Child Left Behind Act (NCLB). Fortunately, this regulation allows much more flexibility than previous Department guidance, including some NASP recommendations.

A Departmental Fact Sheet summarizing the regulatory guidance, Secretary Paige's press release, and link to the final regulations can be found at: <http://www.ed.gov/nclb/freedom/local/specedfactsheet.html>

<http://www.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.pdf>

The regulation offers important guidance and information for school psychologists, IEP team members, and other professionals working with students with disabilities.

* Allows states and school districts to assess no more than 1% of their total student population against alternate standards (approximately 10% of the total special education population or 9% of students with disabilities). More than 1% may participate in alternate assessments, but it

* Clarifies that a state must include the scores of all students in this group who have been in the LEA or state for a full academic year in calculating Adequate Yearly Progress (AYP), and requiring the state to count, as non-proficient, the scores of those students who exceed the 1 % cap (determining which proficient scores are counted as non-proficient);

* Allows states and LEAs to seek a waiver to exceed the 1.0 percent cap if they can submit data to make their case;

* Clarifies that the 1% is reserved for students "with the most significant cognitive disabilities," but it does not define who meets this criteria. The previous Notice of Proposed Rulemaking (NPRM) defined this narrowly as three standard deviations from the mean.

- * Reaffirms how the IEP team should decide how a student participates in assessments (with accommodations or an alternate assessment based on alternate standards).

- * Requires states to promote use of appropriate accommodations, providing appropriate guidance to IEP teams, and training for teachers and other staff in administering assessments to this group of students;

- * Identifies and discusses key concepts that are critical to understanding the amendments to the Title I regulations, including: alternative assessments; out-of-level assessments; and the 1.0 percent cap.

- * Continues to allow – under specific conditions – but does not require states to use alternate achievement standards and establishing additional conditions associated with their use (e.g., informing parents and state reporting);

- * Reasserts the Department's position that no child left behind, means NO child, and that these students, to the extent possible, are included in the general curriculum and participate in assessments aligned with content standards.

While this much needed flexibility is welcomed by states and education leaders, it may add more layers to the "assessment management" already required of states and school districts, as they must now "manage" the use of the 1% cap.

Education groups, such as the NEA, are calling on the Administration and the Department to allow states and school districts that missed AYP solely due to the performance of the students with disabilities subgroup to review their AYP calculations in light of this new rule. Since the new rule allows more appropriate assessments for students with significant cognitive disabilities, including out-of-level testing, fewer schools will be labeled as "failing" to meet AYP.

Education groups are also seeking similar guidance and flexibility for states and schools in other areas of assessment, especially for Limited English Proficient (LEP) students, as well as for additional changes to the law to ensure that schools are not measured just on test results on one day.

For additional background information on the issue, see December 2003 Communiqué article, "No Child Left Behind? AYP and Students With Disabilities" at: <http://www.nasponline.org/publications/cq324ayp.html> .

Also see the Education Week article at: http://www.edweek.org/ew/ewstory.cfm?slug=15web_nclb.h23 (site requires a quick registration).

II. FY 2004 FUNDING REMAINS UNRESOLVED

As reported in NASP Legislative Update 11/21/03 (<http://www.nasponline.org/advocacy/legisup112103.html>), Congress was looking to buy more time to pass the required funding legislation for FY 2004. They previously passed a Continuing Resolution (CR) to keep government operations functioning at the fiscal year 2003 funding levels and gave themselves until Monday, November 24, 2003. Congress has since seventh CR to extend FY 2003 until January 31, 2004.

Seven FY '04 spending bills – District of Columbia, Commerce/Justice/State, VA/HUD, Agriculture, Labor/HHS/Education, Transportation/Treasury, and Foreign Operations – have been rolled into one \$278 billion omnibus federal spending bill, H.R. 2673, the "Consolidated Appropriations Act for FY 2004."

The Conference Committee finalizing the details of the bill took many liberties in accepting House provisions that did not pass in the Senate. Among these are:

- * a private-school voucher program for the District of Columbia (also discussed in the 11/21/03 update);
- * an across-the-board cut of 0.59% to all programs except Defense and Military Construction funds (NASP and our fellow education advocates oppose across-the-board cuts, which result in cutting many vital education programs below current services levels);
- * a provision that would change the time a background check for gun purchases is left open from 90 days to 24 hours, destroying record of the purchase the next day. [Currently, records of criminal background checks are retained for up to 90 days in order to allow the Department of Justice to effectively identify, prevent, or prosecute illegal transactions. When a potential gun buyer is cleared to purchase a firearm by the NICS background check system, the system generates an "allowed" response and the sale proceeds.

However, the ability to retain a record of these transactions for up to 90 days allows law enforcement to audit the system to ensure its integrity and to correct errors that may have occurred allowing a prohibited person to purchase a firearm.]

On December 8, 2003, the House of Representatives approved this Conference Committee version of omnibus bill HR 2673 by a vote of 242- 176. If you would like to see how your member voted, go to: <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2003&rollnumber=676>

III. MULTIPLE ISSUES ENSNARL PROGRESS

Advocates across the spectrum of issues are urging the Senate to reject this omnibus on many grounds. As such, final passage has stalled in the Senate. Senate Minority Leader Daschle (D-SD) and Appropriations Ranking Member Byrd (D-WV) asked that the Senate consider a resolution that would remove the DC voucher program, strike the provisions imposing across-the-board cuts to education, Head Start, and other programs, and alter the aforementioned and other controversial provisions. Majority Leader Bill Frist (R-TN) objected and attempted to bring the omnibus conference report to the Senate floor, hoping for passage on a voice vote. After Democratic objections, Frist was forced to schedule the vote for January 20, 2004, the day the Senate reconvenes for the second session of the 108th Congress. Senator Frist has reportedly expressed uncertainty about the chances of the omnibus bill's passage.

House leaders say they will not consider reopening the conference agreement, and might instead push the idea of a yearlong CR, which would keep much of the government operating at fiscal 2003 spending levels. Leaders are banking on support for the omnibus from Democrats who have already touted the home-state projects and funding earmarks contained in the omnibus. Stay tuned for more details.

If you would like to urge your Senators to reject the omnibus bill, please go to: <http://capwiz.com/nea/issues/alert/?alertid=4475001>

IV. IDEA REAUTHORIZATION PLODS ALONG

As last reported on 11/21/03, the Senate had moved closer to an arrangement for Senate debate on its IDEA bill, S. 1248 (see the NASP website for all legislative details and analysis at: <http://www.nasponline.org/advocacy/IDEALinks.html>). While this is certainly a step in the right direction, it is still no guarantee of action.

The Senate Majority leaders have released a tentative draft floor schedule for next year. First and foremost will be resolution of the FY 2004 spending bills (see above). IDEA reauthorization has been pushed back until March or April. While some would think that the President would urge Republican leaders to complete IDEA so that he may use the victory of a signing ceremony in his re-election campaign, others believe that the Democrats can hold off on completion to prevent this opportunity. Stranger things have happened as a result of election year politics.

Many disability advocates consider as a victory current law remaining current law as long as possible. In the meantime, NASP will continue to promote implementation guidance and best practices for IDEA '97. Improved results for all children is the goal.

NASP will provide any information on IDEA reauthorization as soon as it becomes available (and can be verified).
