

UPDATE ON PASA STUDENT ASSESSMENT UNDER NCLB

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Previously, we have taken the position that it is within the IEP team's discretion to determine whether or not a school district should administer the Pennsylvania Alternate System of Assessment (PASA) to qualifying special needs students on a case-by-case basis. Although our general recommendations remain the same, under the new federal No Child Left Behind (NCLB) Act, P.L. 107-110, 115 Stat. 1425 (2002), a cap of 5% has been established on the total number of handicapped students who may be excluded from statewide assessments including the PSSA and/or the PASA.

To review, student eligibility requirements to take the PASA remain the same. A special education student must meet each of the following requirements:

1. By September of the present school year, the student is in grade 5, 8, or 11; and
2. The student has significant cognitive disabilities;
3. The student requires intensive instruction to learn;
4. The student requires adaptation and support in order to perform and/or participate meaningfully and productively in the everyday life activities of integrated school, home, community and work environments;
5. The student requires substantial modifications of the general education curriculum;
6. The student's participation in the general education curriculum differs greatly in form and/or substance from that of most other students (for example, different objectives, materials or activities).

Under the current IDEA, Part B, children with disabilities must be included in general state and district-wide assessment programs with appropriate accommodations where necessary. In addition, states and districts must have developed and implemented alternate assessments for those children who cannot participate in state and district-wide assessment programs. This mandate has been interpreted by the federal Office of Special Education Programs (OSEP) to mean that all disabled students must participate in some form of state-wide testing.

In contrast, under the NCLB, states are permitted to exclude up to 5% of students from state-wide testing programs in meeting their adequate yearly progress (AYP) goals in schools that receive Title I funding. Within the definition of AYP, one of the subgroups which must be included are children with disabilities. This section states that not less than 95% of each group described who are enrolled in the school are required to take the assessments, consistent with accommodations, guidelines, and alternative assessments provided in the same manner as those provided under section 1412 (a)(17)(A) of the IDEA. An exception to the 95% cap applies in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. Therefore, if any local school fails to ensure that at least 95% of its disabled student population has the

opportunity to participate in some form of state-wide testing, that school cannot be deemed to have made AYP.

In Pennsylvania, all disabled students must be allowed the opportunity to participate in the PSSA, PASA or other alternative assessment program, with accommodations if necessary as determined by the individual student's IEP team. Pennsylvania's Department of Education has followed the published OSEP Guidance which instructs states that there should be no language in statewide assessment guidelines, rules or regulations permitting IEP teams to exempt students from statewide assessment programs beyond those permitted for their non-disabled peers. Moreover, according to OSEP, IEP teams may determine *how* individual students participate in assessment programs, not *whether*. Therefore, although not mandated by law, districts that do not comply with Pennsylvania's Department of Education requirements may nonetheless be subject to sanction.

In summary, the new NCLB guidelines are consistent with this Office's opinion that a certain number of disabled students may in fact be exempt from any state-wide assessment activities as determined by their IEP teams. The number of non-participating students should not exceed 5% of the disabled population in each school that received Title I funds. However, in addition to federal regulations, Districts must comply with state requirements as well. Therefore, although our opinion that all students with disabilities who attend Title I schools are not required to participate in state-wide assessment programs is bolstered by the federal NCLB, districts may still be subject to sanction from the Pennsylvania Department of Education for not meeting its 100% participation requirements.

On a final note, the NCLB testing cap may be modified through the pending reauthorization of IDEA. It is one of the areas that is being actively debated because of the conflicting directives contained in the IDEA with regard to individualization and NCLB's accountability standards.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.