OUR KIDS COUNT

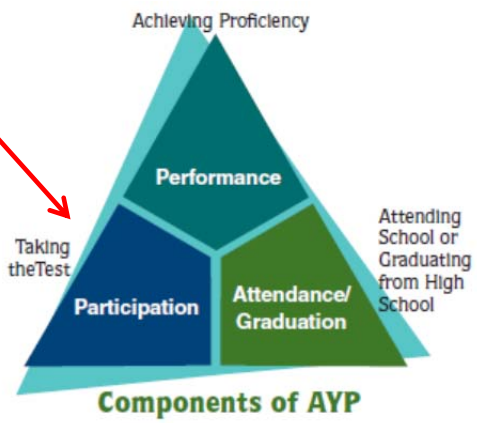
A project of The Advocacy Institute

Test Participation: At Risk under ESEA Flexibility

The No Child Left Behind (current version of ESEA) requirement that schools, school districts and states test at least 95 percent of all students in the required grades and academic areas—and at least 95 percent of each required subgroup—finally catapulted special education students into the realm of full accountability.

Despite a requirement introduced in the Individuals with Disabilities Education Act (IDEA) in 1997 that all students with disabilities be included in all state and district wide assessments, students with disabilities were systemically excluded from state testing and/or assessed with tests designed for students in lower grades ("out-of-level" testing).

There can be no doubt that NCLB's **participation requirement**—part of the trifecta known as "Adequate Yearly Progress" or, simply, "AYP"—finally motivated states to begin to fully include all students in state assessments, including students receiving special education services.



Under AYP, **test participation** was self-policing. Intended as "quality control," the provision ensured test participation by inflicting *automatic AYP failure* if any student subgroup fell below the required 95% threshold. **Student performance on state assessments could not trump poor participation.**

Figure 1

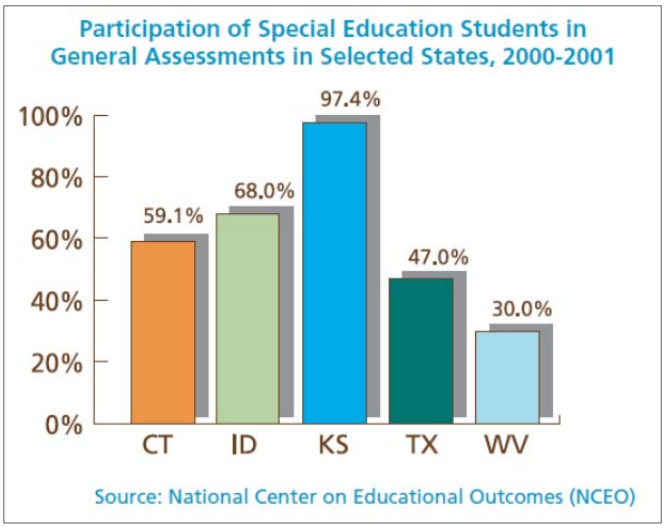
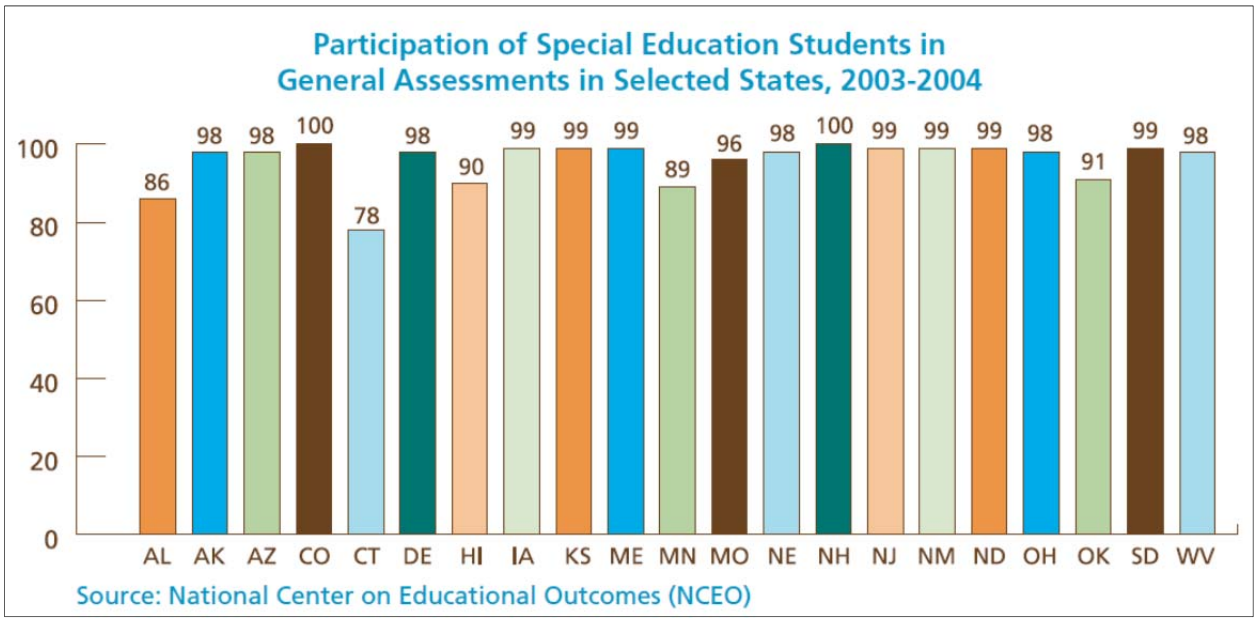


Figure 1 shows the percentages of special education students who participated in the general assessments (with or without accommodations) of several states in the 2000-2001 school year. Only one state – Kansas – performed at or above the NCLB requirement for at least 95 percent participation.

By contrast, three years later, participation rates showed a marked improvement. Figure 2 shows the participation rate for 21 states in the 2003-

2004 school year (following NCLB implementation) for students receiving special education.

Figure 2



Why Test Participation is Important for Students with Disabilities.

First, it is essential that all kids, including students with disabilities, participate in assessments, because through assessment and public reporting, schools and school districts are held accountable not only to the State but to the students who have a right to be provided an opportunity to learn to the same standards set for all students. No student can be denied—on the basis of disability— inclusion in their respective state accountability system without violating their civil rights under Section 504 and the ADA.

Second, allowing any students with disabilities (e.g., students with the most significant cognitive disabilities) to be excluded from testing cannot be justified and creates a slippery slope. y. Both IDEA and ESEA require alternate assessments for students with disabilities who cannot participate in general state or district assessments with accommodations.

Third, both schools and parents need to know how students with disabilities are performing on a state's academic standards for the student's enrolled grade. This information is critical to planning instruction, identifying effective interventions, improving professional development and considering appropriate accommodations. It helps inform a student's need(s) for intervention to attain proficiency in core academics such as reading and mathematics for same grade peers. Test results provide objective information to guide IEP teams in decision making and development of goals linked to standards. In many states, test participation at the middle and high school levels may also carry serious consequences such as placement in classes teaching higher order thinking earning a regular high school diploma.

Test Participation in ESEA Flexibility Requests.

ESEA Flexibility does not waive the statutory requirement under the section 1111(b)(2)(I)(ii) of the ESEA mandating student participation in State assessments (see http://www.ed.gov/esea/flexibility).

Therefore, schools must continue to assess not less than 95 percent of all students and each student subgroup to make Adequate Yearly Progress, though the punitive sanctions for failing to make AYP may be modified.

States receiving ESEA waivers cannot treat students with disabilities differently than other students with respect to the statutory mandate to ensure the participation of all students in state and district assessments that are a key component to the state-developed accountability systems.. The civil rights of students with disabilities cannot be waived.

Based on information contained in the approved ESEA Flexibility Requests (Round 1), the following states have maintained an acceptable focus on test participation, for all students and student subgroups**: Kentucky, Massachusetts, Minnesota, and Tennessee.**

The following states have failed to articulate how test participation will count in their accountability systems and/or have designed systems that lessen the impact of test participation on schools and districts, compared to current law: **Colorado, Florida, Georgia, Indiana, New Jersey, New Mexico, and Oklahoma**.

State specific information

**indicates states with less than adequate test participation requirements or use of test participation within the accountability system.*

Colorado*

Colorado's request indicates the state will require schools/districts to meet a 95% participation rate on the Colorado Student Assessment Program (CSAP) subject areas of reading, math, writing and science (similar to current AYP), as well as a 95% participation rate on the ACT.

Specifically, if a school/district does not meet this 95% participation rate **in more than one area**, its plan type or accreditation rating is lowered one level. For example, while a school's overall percent of framework points earned may earn it an Improvement Plan, if it does not meet the participation rate requirement, it is lowered to a Priority Improvement Plan. (pg. 310)

However, according to Appendix 7 - Annotated School Performance Framework Report (High School), schools do not get any credit for test participation and the participation requirement does **not** apply to student subgroups (as required by current law). It states:

> *"Schools do not receive points for test participation. However, schools are assigned one accreditation category lower than their points indicate if they do not (1) meet at least 95% participation rate in all or all but one subject area (reading, writing, math, science and COACT), or (2) for schools serving multiple grade levels, meet at least a 95% participation rate in all or all but one subject area when individual subject rates are rolled up across grade levels AND the school makes AYP participation (in reading and math) for each grade level overall (not including disaggregated groups)."*

This provision is in direct conflict with current law.

Florida*

Florida's request indicates that its school grading system includes test participation. "Schools cannot receive a grade of "A" if they have tested less than 95% of their students. Schools that test **less than 90%** of their students are not eligible to receive a school grade. If a school does not test at least 90% of the students the school will receive an "incomplete" grade status and an investigation is conducted culminating in a report to the Commissioner of Education providing the circumstances and reasons for not meeting the percent tested requirement. An "incomplete" grade is not erased until after the investigation is complete and the Commissioner makes a decision as to the consequence of not meeting the minimum participation required." (Pg 52)

According to Florida's school grading system (below), a school can earn a "B" if it tests at least 90% of eligible students.

	A	B	C	D	F
School Grade Points*	525 or more	495-524	435-494	395-434	Less than 395
Percent of Eligible Students Tested	At least 95%	At least 90%	At least 90%	At least 90%	Less than 90%

This provision is in direct conflict with current law.

Georgia*

Georgia's request states that the state's proposed College and Career Ready Performance Index* (CCRPI) will continue to include participation as an overall factor in the statewide accountability system. "Combining the rigorous indicators within the CCRPI, the innovative way of capturing all High Needs Students, with the participation component will ensure schools and districts receive complete feedback on all student performance." (pg. 53)

However, no details are provided regarding test participation requirements.

* The CCRPI is under development and not part of the approved waiver request.

This suggests that the state's system may not comply with current law.

Indiana*

Indiana's request makes no mention of participation requirements in its state accountability system.

This suggests that the state's system may not comply with current law.

Kentucky

Kentucky's requests states clearly that "**Prior to making the AMO and being placed into a category, all schools would need to meet a 95% participation rate for all groups of students being tested**, and the high schools would need to meet their individualized graduation goal." (Pg. 56)

Every school in the state will have an AMO/AYP goal. If the school obtains the AMO goal, then the school has made Adequate Yearly Progress (AYP) **if it also meets the required participation rate** and the graduation goal if it is a high school. (Pg. 58)

Kentucky will calculate test participation rates for each school. The goal for test participation rate shall be at least 95% of the total population and of all groups of students. Making or missing the goal will be used in conjunction with the school's AMO**. If the school makes its AMO but misses its test participation goal, for the All Students group or any subgroup, then the school will be considered to have missed its AMO.**

This is in compliance with current law.

Massachusetts

Massachusetts' request clearly states that "**A school cannot reach its CPI* goals without achieving a 95-percent participation rate. This applies to students overall and each student group."**

*Math, English-language arts (ELA), and science performance as measured by the Composite Performance Index (CPI).

This is in compliance with current law.

Minnesota

Minnesota's request presents an accountability system that maintains the current participation requirements in current law.

> 2.1.17 AYP Calculation: Participation Measurement 2011 (pg. 508)
> Schools are required to administer a statewide assessment to all students enrolled in grades three through eight and grades 10 and 11. **Schools that do not meet the 95% participation requirement are identified as Not Making AYP. The participation requirement is applied to all disaggregated groups.** Enrollment is based on the number of students enrolled over the testing window as reported on MARSS. Participation is based on the number of assessment records reported where the student was present for testing.

This is in compliance with current law.

New Jersey*

New Jersey's request makes no mention of test participation requirements, by all students or student subgroups.

According to the Request, "key metrics, such as early childhood literacy, chronic absenteeism, 8th grade reading and math proficiency, growth scores on State assessments, AP passing rates, ACT and SAT scores, and high school graduation rates will paint a full and accurate picture of school and district performance." (Performance Report Card)

This suggests that the state's system may not comply with current law.

New Mexico*

New Mexico's request makes no mention of any test participation requirement (all students or student subgroups) as part of accountability system. (See DETERMINATION OF A SCHOOL'S GRADE at page 316.)

This suggests that the state's system may not comply with current law.

Oklahoma*

Oklahoma's request states that "participation is one of 30 objectives that districts and schools are required to meet. The Participation Index remains the same as the current AYP criteria."

Each district and school site will be ranked based on the percent of AMOs that they achieve. Districts or sites that meet 0-33% of the AMOs will be designated in the Yellow Category. Those that meet 34-66% of the AMOs will be designated in the Yellow-Green Category. Those that meet 67-100% of the AMOs will be designated in the Green Category.

Therefore, test participation in Oklahoma is just one factor in an array of criteria used to rank schools and districts.

This approach does not align with current law.

Tennessee

Tennessee's request states clearly that the state will continue to report data for students in a district or school group, with a minimum number of 10. Schools or districts must have at least a 95 percent participation rate in the required Tennessee Comprehensive Assessment Program (TCAP) accountability tests for all students and for each student subgroup**. If a school does not meet this participation rate, the school will automatically fail both its achievement and gap closure measures.**

This is in compliance with current law.