

April 15, 2004

Raymond J. Simon  
Assistant Secretary  
Office of Elementary and Secondary Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Assistant Secretary Simon:

I am writing to seek clarification of some questions that have arisen regarding the December 8, 2003 regulation on alternate assessments for disabled students under the NCLB Act. (34 C.F.R. § 200 et seq. ) My questions concern the requirement that assessments, including alternate assessments, yield results for the grade in which a student with disabilities is enrolled. I have two questions regarding enrollment:

1. Students with disabilities are sometimes assigned by their IEP's to be educated in ungraded classrooms where students of varying ages are grouped by abilities. In this instance, in what grade should these students be considered enrolled?
2. A student with a disability is sometimes assigned by the IEP to be enrolled in a class based on his or her ability rather than years in school or chronological age. For example a 13 year old, educated with the fifth grade curriculum, might be enrolled in the fifth grade. Should that student be considered enrolled in the fifth grade for purposes of assessment?

In order to determine the proper assessment levels for students in these situations, including whether the use of alternate standards is appropriate, it is first necessary to determine the grade of enrollment. These issues have troubled States and districts around the country, and we would greatly appreciate your assistance.

Thank you for your attention to these important matters.

Sincerely,

Leigh M. Manasevit