



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

APR - 1 2016

The Honorable Susan McCauley
Interim Commissioner
Alaska Department of Education and Early Development
801 West 10th Street, Suite 200
PO Box 110500
Juneau, AK 99811-0500

Dear Commissioner McCauley:

I am writing in response to our discussion on March 30, 2016, regarding the requirements for State assessment systems under both the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB), and the ESEA as reauthorized by the Every Student Succeeds Act (ESSA).

First, during the 2016-2017 school year, States will operate primarily under NCLB requirements. Under NCLB requirements, States are required to administer the same assessments to all students for purposes of Federal accountability, so the U.S. Department of Education's (ED) expectation is that, in the 2016-2017 school year, all local educational agencies (LEAs) and schools in Alaska will administer the State's single, statewide assessments in reading/language arts and mathematics to all students in each of grades 3 through 8 and once in high school, and in science at least once each in grades 3-5, 6-9, and 10-12. The ESSA takes effect in the 2017-2018 school year. The essential requirements for State assessment systems under the ESEA have not changed in the ESSA.

As outlined in my *Dear Colleague Letter* on December 18, 2015, the ESSA maintains the requirement that each State administer high-quality annual assessments in at least reading/language arts, mathematics, and science that are aligned to State-determined content standards and the State must demonstrate through the assessment peer review process that the assessment system meets nationally recognized professional and technical standards. A high-quality State assessment system that is aligned to State-determined academic standards is essential to providing information that States, districts, principals, and teachers can use to identify the academic needs of students, target resources and supports toward students who need them most, evaluate school and program effectiveness, and close achievement gaps among students. A high-quality assessment system also provides useful information to parents about their child's progress toward, and achievement of, grade-level standards.

I also want to highlight the requirements for the Title I assessment peer review process through which each State is required by the ESEA to submit evidence to demonstrate that its assessment system is consistent with relevant, nationally recognized professional and technical standards. As described in ED's letter to all States on September 25, 2015, the updated peer review process responds to important changes in the field and remains focused on ensuring that State assessments are valid and reliable and consistent with nationally

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recognized professional and technical standards, as required by ESEA, and provides coherent and timely information about student attainment of the State's challenging academic standards. Alignment with State-determined academic standards remains a central aspect of demonstrating the technical quality and content validity of your State's assessment system. A State must demonstrate that its assessments are aligned with the full extent of its academic content standards, including higher-order thinking skills. This includes a demonstration that a State's assessment system includes items that focus on critical and analytical thinking.

Once the ESSA takes effect in the 2017-2018 school year, section 1111(b)(2)(H) will permit LEAs to administer "a nationally recognized high school academic assessment" in lieu of a State's high school assessment, but there are several statutory steps that must occur prior to LEAs using such nationally recognized assessments in high schools to ensure these assessments are high-quality and comparable to existing Statewide assessments for high school students.

First, under the statute, States must establish technical criteria to evaluate the quality of nationally-recognized high school assessments (Section 1111(b)(2)(H)(ii)). States must then review any nationally-recognized high school assessments selected by an LEA against these criteria, including evidence that they are aligned to the State's academic content standards, address the full depth and breadth of those standards, and are equivalent (or more rigorous) in terms of content coverage, difficulty, and quality to the Statewide high school academic assessments (Section 1111(b)(2)(H)(v)(I)). Evidence must also be presented that any nationally-recognized high school assessment produces valid, reliable, and comparable data on student achievement compared to the Statewide assessments, consistent with the State's achievement standards, and that shows the nationally-recognized assessment meets other critical Title I requirements (Section 1111(b)(2)(H)(v)(II)(IV)). Under the ESSA, LEAs will not be able to use nationally-recognized high school assessments until (1) the State educational agency (SEA) reviews such assessments and approves their use, as per Section 1111(b)(2)(H)(iii) of the ESSA, and (2) the State submits such assessments to ED for peer review, as required by Section 1111(b)(2)(H)(iii)(II).

Finally, the ESSA does not offer LEAs the option of using nationally recognized assessments in lieu of the State assessments in grades 3-8. The ESSA requires States to administer the same statewide mathematics and reading/language arts assessments to all students in grades 3-8.

Please let us know if you have any questions about any of the above or about any additional assessment requirements in either the current version of the ESEA or the ESSA. We appreciate the work you are doing to improve Alaska's schools and provide a high-quality education for Alaska's students. If you have any questions, please contact Robyn Pettiford or Robert Salley of my staff at: OSS.Alaska@ed.gov.

Sincerely,



Ann Whalen

Senior Advisor to the Secretary Delegated the Duties of
Assistant Secretary for Elementary and Secondary
Education



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

FEB - 3 2014

The Honorable Mike Hanley
Commissioner of Education
Alaska Department of Education and Early Development
801 West 10th Street, Suite 200
Juneau, Alaska 99811-0500

Dear Commissioner Hanley:

This letter serves as a response to your letter dated January 20, 2015, regarding the requirements for State assessments under the Elementary and Secondary Education Act of 1965 (ESEA). Before I respond to your four specific questions, please let me emphasize the importance of the assessment requirements in the ESEA, which are focused on ensuring that parents and educators have the information they need to help every student be successful and on protecting equity for all students by maintaining a consistent measure of what students know and are able to do regardless of where they live. High-quality, annual statewide assessments are essential to providing critical information about student achievement and growth to parents, teachers, principals, and administrators at all levels. When that system is aligned with the academic content and achievement standards that a State expects all children to know and be able to do, it provides the road map for aligning instruction to the academic needs of students identified by the assessment system. High-quality, annual, statewide assessments provide information on *all* students so that educators can improve educational outcomes, close achievement gaps among subgroups of historically underserved students, increase equity, and improve instruction.

Below, I have responded to each question, providing the statutory and regulatory citations, as applicable, and noting any differences between the statutory and regulatory requirements of the ESEA and ESEA flexibility.

1. What are the Federal requirements regarding the frequency, grade levels, and content areas of State assessments? Can ED provide an outline of the requirements in section 1111(b)(3)?

ESEA section 1111(b)(3) (20 U.S.C. § 6311(b)(3)) requires a State educational agency (SEA) that receives funds under Title I, Part A of the ESEA to implement in each local educational agency (LEA) in the State a set of high-quality, yearly academic assessments that includes, at a minimum, assessments in mathematics, reading or language arts, and science. With respect to reading/language arts and mathematics, the assessments must be administered in each of grades 3 through 8 and not less than once in grades 10 through 12. With respect to science, the assessments must be administered not less than once during grades 3 through 5, grades 6 through 9, and grades 10 through 12.

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Under ESEA section 1111(b)(3)(C) (20 U.S.C. § 6311(b)(3)(C)) and 34 C.F.R. § 200.2, the State assessments must —

- Be the same academic assessments used to measure the achievement of all children (§ 1111(b)(3)(C)(i); § 200.2(b)(1));
- Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and English Learners (§ 200.2(b)(2));
- Be aligned with the State's challenging academic content and achievement standards and provide coherent information about student attainment of the standards (§ 1111(b)(3)(C)(ii); § 200.2(b)(3));
- Be used for purposes for which they are valid and reliable and be consistent with relevant, nationally recognized professional and technical standards (§ 1111(b)(3)(C)(iii); § 200.2(b)(4));
- Be supported by evidence from the test publisher or other relevant sources that the assessment system is of adequate technical quality for each required purpose (§ 1111(b)(3)(C)(iv); § 200.2(b)(5));
- Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding, which may include single or multiple question formats that range in cognitive complexity within a single assessment and multiple assessments within a subject area (§ 1111(b)(3)(C)(vi); § 200.2(b)(7));
- Provide for the participation of all students in the tested grades, including students with disabilities, who must be provided reasonable accommodations, and English Learners, who must be assessed in a valid and reliable manner and provided reasonable accommodations including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what those students know and can do in academic content areas until they have achieved proficiency in English (§ 1111(b)(3)(C)(ix); §§ 200.2(b)(9), 200.6);
- Assess English Learners who have been in schools in the United States for three or more consecutive years in English on the reading/language arts assessments, except that, on a case-by-case basis, an LEA may assess those students in their native language for not more than two additional years (§ 1111(b)(3)(C)(x));
- Produce individual student interpretive, descriptive, and diagnostic reports that allow parents, teachers, and principals to understand and address the specific academic needs of students (§ 1111(b)(3)(C)(xii); § 200.2(b)(11));
- Enable results to be disaggregated within each State, LEA, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students compared to students who are not economically disadvantaged (§ 1111(b)(3)(C)(xiii); § 200.2(b)(10));
- Be consistent with widely accepted professional testing standards, objectively measure academic achievement, knowledge, and skills, but do not measure personal or family beliefs or attitudes (§ 1111(b)(3)(C)(xiv); § 200.2(b)(8)); and
- Enable the production of itemized score analyses (§ 1111(b)(3)(C)(xv); § 200.2(b)(12)).

For each grade and subject assessed, a State's academic assessment system must —

- Address the depth and breadth of the State's academic content standards;
- Be valid, reliable, and of high technical quality;

ESEA flexibility does not remove these requirements.

2. Do States have to administer the same general assessment to all students?

ESEA section 1111(b)(3)(C)(i) requires State assessments to "be the same academic assessments used to measure the achievement of *all* children (emphasis added)." So, with certain limited exceptions described below, the assessments an SEA develops must be the same for all students in the State. An SEA may not assess only a sample of students, even if that sample is representative of students in each LEA or the State as a whole. One reason for this is to help ensure that all students in a State are held to the same high expectations, regardless of a student's race, ethnicity, socioeconomic status, or neighborhood.

One exception to the general requirement that a State's assessment must be the same for all students is the authority in the Title I regulations for an SEA to adopt alternate academic achievement standards and alternate assessments aligned with those standards for students with the most significant cognitive disabilities. See 34 C.F.R. §§ 200.1(d), 200.6(a)(2)(ii)(B). These standards and assessments apply to a very small number of students with disabilities who, even with the very best instruction, are not likely to meet the grade-level academic achievement standards that apply to all students.

ESEA section 1111(b)(5) (20 U.S.C. § 6311(b)(5)) is another exception. It applies *only* in a State that provides evidence, satisfactory to the Secretary, that neither the SEA nor any other State government entity has sufficient authority under State law to adopt standards and assessments that would be applicable to all students enrolled in public schools in the State. In this case, the SEA may meet the requirements of ESEA section 1111(b)(3) by adopting academic standards and assessments on a statewide basis, and limiting their applicability to students served under Title I, or adopting and implementing policies that ensure the each Title I LEA in the State adopts academic content and achievement standards and aligned assessments that meet all of the requirements in section 1111(b)(3) and corresponding regulations and apply to all students in the LEA. Currently, this exemption does not apply to any States.

ESEA section 1111(b)(5) has no counterpart under ESEA flexibility; no SEA that has received ESEA flexibility is prohibited under State law from adopting a single statewide assessment system that applies to all students in the State. In other words, each SEA that has received ESEA flexibility has indicated it has authority under State law to adopt a single statewide assessment system that applies to all students in the State.

3. What are the consequences if a State or district fails to adhere to the Federal assessment requirements?

If an SEA ~~fails to comply~~ with the assessment requirements in either ESEA or ESEA flexibility, ED has a range of enforcement actions it can take. These include sending a written request to the SEA that it come into compliance, increasing monitoring, placing a condition on the SEA's Title

I, Part A grant award on its ESEA flexibility request, placing the SEA on high-risk status (34 C.F.R. § 80.12), issuing a cease and desist order (GEPA section 456 (20 U.S.C. § 1234e)), entering into a compliance agreement with the SEA to secure compliance (GEPA 457 (20 U.S.C. § 1234f)), withholding all or a portion of the SEA's Title I, Part A administrative funds (ESEA section 1111(g)(2) (20 U.S.C. § 6311(g)(2))), and suspending, and then withholding, all or a portion of the State's Title I, Part A programmatic funds (GEPA section 455 (20 U.S.C. § 1234d)). An SEA has similar enforcement actions available to it with respect to noncompliance an LEA, including withholding an LEA's Title I, Part A funds. See, e.g., GEPA section 440 (20 U.S.C. § 1232c(b)).

The specific enforcement action(s) ED would take depends on the severity of non-compliance. For example, if an SEA has developed a statewide assessment system but that system is not approvable because it fails to meet all statutory and regulatory requirements, ED might condition the SEA's Title I, Part A grant award, place the SEA on high-risk status, enter into a compliance agreement, or withhold State administrative funds. ED has, in fact, withheld Title I, Part A administrative funds under ESEA section 1111(g) (20 U.S.C. § 6311(g)) from a number of States for failure to comply with the assessment requirements in ESEA section 1111(b)(3). If an SEA or LEA refuses to implement an assessment system that meets the statutory and regulatory requirements, ED might seek to withhold programmatic funds from the State and expect the SEA to withhold from the LEA. Clearly, if an SEA or LEA fails to comply with the assessment requirements in either the ESEA or ESEA flexibility, it could place its Title I, Part A funds in jeopardy. In addition, the SEA or LEA could find itself out of compliance with a wide range of additional Federal programs that rely on statewide assessment results, putting additional funds at risk. These additional programs include those targeting students most at risk including, but not limited to: the School Improvement Grants (SIG) program; ESEA Title III; Part B of the Individuals with Disabilities Education Act (IDEA); programs for rural schools under ESEA Title VI; migrant education under ESEA Title I, Part C; and programs focused on professional development and other supports for teachers, such as ESEA Title II.

Please note that an LEA may not avoid administering the State assessments required under ESEA section 1111(b)(3) by declining to accept Title I, Part A funds. As noted above, the assessment requirements are State-level requirements that apply to any SEA that accepts Title I, Part A funds. That SEA must then administer its assessments statewide — including to students in LEAs that do not participate in Title I.

4. Would legislative language that allows parents to opt their children out of participating in statewide Federally required assessments be considered as a failure to adhere to the Federal assessment system?

Section 1111(b)(3)(A) of the ESEA requires each SEA to have a set of high-quality, yearly student academic assessments for reading/language arts and mathematics in grades three through eight and once in high school, and for science once each in grades 3-5, 6-8, and 10-12. SEAs and LEAs must provide for the participation of all students on the assessments (see ESEA section 1111(b)(3)(C)(ix)(I)) so that they can identify the learning progress of all students against the same high expectations, regardless of a student's race, ethnicity, socioeconomic status, or neighborhood. This requirement does not permit certain students or a specific percentage of students to be excluded from assessments. Rather, it sets out the rule that all students in the

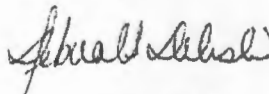
tested grades must be assessed. (ESEA section 1111(b)(2)(D)(i) permits an LEA or school to make adequate yearly progress as long as it assesses at least 95 percent of its students.)

In applying for funds under Title I, Part A of the ESEA, the SEA assured that it would administer the Title I, Part A program in accordance with all applicable statutes and regulations (see ESEA section 9304(a)(1)). Similarly, each LEA that receives Title I, Part A funds assured that it would administer its Title I, Part A program in accordance with all applicable statutes and regulations (see ESEA section 9306(a)(1)). If an SEA does not ensure that all students are assessed, ED has a range of enforcement actions it can take (as described in response to question 3 above). The SEA has similar enforcement actions available to it with respect to an LEA that does not ensure that all students participate in the State assessments, including withholding the LEA's Title I, Part A funds (20 U.S.C. § 1232c(b)). In addition, all SEAs with approved ESEA flexibility plans have included specific consequences in their accountability systems for any school that misses participation rate, and must implement this component of their accountability systems with fidelity.

As noted above, an SEA or its LEAs may find themselves out of compliance with other Federal programs that use student achievement results as well, including programs targeting students most at risk including, but not limited to: SIG; ESEA Title III; Part B of the IDEA; programs for rural schools under ESEA Title VI; migratory students under ESEA Title I, Part C; and programs focused on professional development and other supports for teachers, such as ESEA Title II.

Please do not hesitate to contact me if you need additional information or clarification. Thank you for your continued commitment to enhancing education for all of Alaska's students.

Sincerely,



Deborah S. Delisle
Assistant Secretary