



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

FEB 20 2015

The Honorable David Hespe
Commissioner of Education
New Jersey Department of Education
P.O. Box 500
Newark, NJ 08625

Dear Commissioner Hespe:

This letter is in response to your letter on February 17, 2015, regarding the requirements for State assessments under the Elementary and Secondary Education Act of 1965 (ESEA) and, concomitantly, ESEA flexibility. Before I respond to your three specific questions, please let me emphasize the importance of the assessment requirements in the ESEA. A high-quality, annual statewide assessment system is essential to provide critical information regarding student achievement 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. A high-quality, annual system provides 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? Did New Jersey receive any flexibility related to these requirements as part of ESEA flexibility?

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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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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;
- Express student results in terms of the State’s academic achievement standards; and

- Be designed to provide a coherent system across grades and subjects. 34 C.F.R. § 200.3(a).

ESEA flexibility does not remove these requirements.

2. What are the consequences if a State or district fails to adhere to the Federal assessment requirements? Did New Jersey receive any flexibility related to these consequences as part of ESEA flexibility?

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 letter to the SEA requesting that it come into compliance, increasing monitoring, placing a condition on the SEA's Title I, Part A grant award or 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 by 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 would depend 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). On the other hand, 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.

As noted above, ESEA flexibility does not waive the assessment requirements for New Jersey or any other State. ED has provided some flexibility with respect to accountability, however, because many States like New Jersey are transitioning to new assessments aligned with college- and career-ready standards in 2014-2015. Following the first administration of these new assessments, an SEA may choose not assign schools a rating or grade as part of its system of differentiated recognition, accountability, and support for the 2015-2016 school year. Instead,

schools will retain their 2014-2015 grade or rating in 2015–2016 and will continue to implement appropriate interventions based on the continued grade or rating, and the SEA will resume assigning schools a rating or grade in the 2016-2017 school year, per the SEA’s approved ESEA flexibility request, based on the State’s assessments administered in 2015-2016.

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.

3. 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?

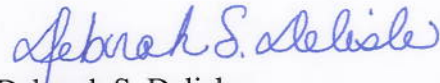
Section 1111(b)(3)(A) of the ESEA requires each SEA to have a set of high-quality, yearly student academic assessments for reading/language arts and mathematics in grades three through eight and once in high school, and for science once each in grades 3-5, 6-9, and 10-12. The SEA and its LEAs must provide 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)(I)(i), which pertains to accountability determinations, 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, each 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 2 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, an SEA with an approved ESEA flexibility request has included specific consequences in its accountability system for any school that misses participation rate, and must implement this component of its accountability system with fidelity.

Given the reliance on assessment results in other Federal education programs, an SEA or its LEAs may find themselves out of compliance with those programs also. Those additional programs include those 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 New Jersey's students.

Sincerely,



Deborah S. Delisle
Assistant Secretary