



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable Kirsten Baesler
Superintendent of Public Instruction
North Dakota Department of Public Instruction
600 East Boulevard Avenue, Department 201
Bismarck, ND 58505

March 5, 2018

Dear Superintendent Baesler:

I am writing in response to the North Dakota Department of Public Instruction's (NDDPI) request on February 26, 2018, for the U.S. Department of Education (Department) to use its transition authority under the Every Student Succeeds Act (ESSA) to allow North Dakota's local educational agencies (LEAs) to use the ACT, a locally selected, nationally recognized high school assessment, in place of the North Dakota State Assessment (NDSA) in reading/language arts and mathematics in high school for accountability purposes in spring 2018. North Dakota submitted its request to permit LEAs this flexibility prior to implementing the Elementary and Secondary Education Act (ESEA) section 1111(b)(2)(H) and 34 CFR § 200.3(b)(2)(ii), which together stipulate that, before a State may approve a locally selected, nationally recognized high school academic assessment for use by an LEA, the State conduct a technical review of the assessment and submit evidence to the Department that demonstrates that the assessment meets the requirements under 34 CFR § 200.3, including peer review by the Department under ESEA section 1111(a)(4).

In its request submitted on February 26, 2018, NDDPI asserts that providing LEAs with the flexibility to administer a locally selected, nationally recognized high school assessment will be in the best interest of schools and students. NDDPI will implement a new State assessment system in spring 2018; the State contends that, given the timing of the new assessment administration, spring 2018 is the optimal time for LEAs to choose between the new NDSA and the ACT so that an LEA is not administering a different assessment in three consecutive years. Moreover, NDDPI asserts that, in the absence of this flexibility, its LEAs would administer the NDSA to 10th graders in 2018. If the LEA were to switch to select the ACT as the locally selected, nationally recognized high school assessment in 2018-2019, it would mean the same students would be assessed for inclusion in the accountability system in successive years.

Because this is the first year the ESEA as amended by the ESSA is fully implemented, it is reasonable that NDDPI has not had time to fully complete the necessary State review of the ACT, particularly because NDDPI cannot yet compare achievement levels on the ACT to the new NDSA, and submit evidence to the Department for peer review. Therefore, consistent with section 4(b) of the ESSA, which authorizes the Department to ensure an orderly transition to the new law, NDDPI may allow its LEAs to

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implement the ACT as a locally selected, nationally recognized high school assessment for the 2017-2018 school year and to use the results of that assessment in place of the NDSA high school assessment in the State's accountability system, including the identification of schools for comprehensive or targeted support and improvement. The State must, however, ensure that it meets all statutory and regulatory requirements related to locally selected, nationally recognized high school assessments prior to permitting LEAs to administer the ACT in the 2018-2019 school year. These requirements include the submission of evidence in support of the NDSA and ACT assessments to the Department for peer review by December 31, 2018. The State must also ensure that, in the 2017-2018 school year, it continues to meet all statutory and regulatory requirements related to assessments, generally, including the requirements in 34 CFR §§ 200.2 and 200.6 related to State responsibilities for assessment and the inclusion of all students.

I appreciate the work you are doing to improve your schools and provide a high-quality education for your students. If you have any questions, please contact Megan Oberst or Jameel Scott of my staff at: OSS.NorthDakota@ed.gov.

Sincerely,

/s/

Jason Botel
Principal Deputy Assistant Secretary,
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
of Elementary and Secondary Education

cc: Robert Bauer, Assessment Director
Laurie Matzke, Assistant Superintendent of Public Instruction