



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable Kathy Hoffman
Superintendent of Public Instruction
Arizona Department of Education
1535 West Jefferson Street
Phoenix, AZ 85007

March 28, 2019

Dear Superintendent Hoffman:

I am writing in response to Arizona's request on December 20, 2018, for a waiver of section 1111(b)(2)(H) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), and 34 CFR 200.3(b)(2)(ii), which stipulate that, before a State may approve a locally selected, nationally recognized high school academic assessment for use by a local educational agency (LEA), the State must submit evidence to the U.S. Department of Education (Department) that demonstrates that each locally selected, nationally recognized high school assessment meets the requirements under 34 CFR 200.3, including technical review by the State and peer review and approval by the Department under section 1111(a)(4) of the ESEA. The Arizona Department of Education (ADE) requested this waiver in order to allow for the administration in spring 2019 of the SAT and ACT by LEAs that request to replace the AzMERIT statewide assessment in reading/language arts and mathematics with the SAT or ACT and/or the AIMS science assessment with the ACT.

After carefully reviewing this information in the context of ADE's request, I do not believe ADE has sufficiently demonstrated that a waiver of the pre-review and approval requirements before an LEA may administer a nationally recognized high school academic assessment is warranted. As noted below, these requirements ensure that a nationally recognized assessment such as the SAT and ACT meets all statutory and regulatory requirements *prior* to being administered in place of the statewide assessment. Therefore, I am declining to approve ADE's request to waive ESEA section 1111(b)(2)(H) and 34 CFR 200.3(b)(2)(ii).

The statute and regulations provide important requirements that are necessary to safeguard the statewide assessment system before a State can elect to permit LEAs to select a nationally recognized high school academic assessment in place of the State's high school assessment. That is, prior to a State's submitting a locally selected, nationally recognized high school assessment for peer review by the Department and allowing its use by LEAs in place of the statewide assessment, ESEA section 1111(b)(2)(H)(ii)-(iii)(I) and 34 CFR 200.3(b)(1) require that the State conduct a technical review of the assessment. That review must determine if the assessment: 1) is aligned with the State's challenging academic standards; 2) addresses the depth and breadth of those standards; 3) is equivalent to or more rigorous than the statewide assessment with respect to the coverage of academic content, the difficulty of the assessment, the overall quality of the assessment, and other

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aspects that address the State’s technical criteria; 4) meets the requirements in 34 CFR 200.2(b); and 5) produces valid and reliable data on student academic achievement that are comparable to student academic achievement data for all high school students and each subgroup on the statewide assessment at each academic achievement level and are expressed in terms consistent with the State’s academic achievement standards, such that they provide unbiased, rational and consistent differentiation among schools within the State for the purpose of the State-determined accountability system. 34 CFR 200.3(b)(2)(i) also requires the State to ensure that the use of appropriate accommodations does not deny a student with a disability or an English learner the opportunity to participate in the assessment nor any of the benefits from participation in the assessment that are afforded to students without disabilities or students who are not English learners. ESEA section 1111(b)(2)(H)(iii)(II)-(III) and 34 CFR 200.3(b)(2)(ii) then requires that this evidence be submitted for Department assessment peer review and approval prior to a State’s authorizing an LEA to administer a nationally recognized high school academic assessment. These provisions ensure that, before a locally selected, nationally recognized high school academic assessment may be used in place of the statewide assessment, it fairly evaluates the achievement of the State’s challenging academic standards for all students and each subgroup of students in an LEA that selects the assessment and provides appropriate information for use in the statewide accountability system. The Department has shared this information with all States on multiple occasions, including in a memo to all State assessment directors in [May 2017](#).

ADE has not provided evidence that it has completed any of this work. Specifically, ADE has not demonstrated that it set academic achievement standards for the SAT or ACT or that these tests produce valid and reliable data on student academic achievement that are comparable for all high school students and each subgroup at each academic achievement level, are expressed in terms consistent with the State’s academic achievement standards, and provide unbiased, rational and consistent differentiation among schools within the State for the purpose of the State-determined accountability system. Moreover, the information provided does not sufficiently demonstrate that the SAT and ACT are comparable regarding academic content coverage and alignment to the State assessment. ADE must also evaluate whether accommodations permitted by the ACT and SAT do not deny a student with a disability or an English learner any of the benefits from participation in the assessment that are afforded to students without disabilities or students who are not English learners. For these reasons, I do not believe it is appropriate for me to waive these significant requirements to permit ADE to permit LEAs to administer the SAT or ACT prior to formal review by ADE and the Department.

In addition, section 1111(b)(2)(H)(vi) and 34 CFR 200.3(c)(1) require an LEA to notify parents regarding the LEA’s intent to administer a locally selected, nationally recognized high school academic assessment. 34 CFR 200.3(c)(1) requires that an LEA notify parents of how parents and, as appropriate, students may provide meaningful input regarding the request as well as addressing any effect of the request on the instructional program in the LEA. This regulation further requires an LEA to provide an opportunity for meaningful consultation to all public charter schools whose students would be included in such assessments. These actions are essential to ensure relevant stakeholders have needed information in advance of any change and can work with the LEA to make their voices heard. ADE did not indicate whether these actions were taken in the LEAs that requested to use the SAT or ACT.

Further, the Department is concerned with several other aspects of Arizona’s assessment system. First, the Department is concerned that the Arizona State law regarding a menu of assessments

(Arizona Revised Statutes (A.R.S) 15-741.02) does not comply with ESEA section 1111(b)(2)(B)(i) that requires a State to administer the same assessments to all elementary and secondary school students in the State. At the high school level, to the extent the menu authorizes a list of nationally recognized high school academic assessments under ESEA section 1111(b)(2)(H) from which an LEA may choose, as noted above, ADE has not complied with the statutory and regulatory requirements to implement that provision. It also appears that the law would allow high schools within the same LEA to administer different assessments. As required under 34 C.F.R. § 200.3(a)(2), if an LEA uses a locally selected assessment in place of the State assessment, it must administer the same nationally recognized assessment to all high school students in the district, notwithstanding the small percentage of students who may take an alternate assessment aligned with alternate academic achievement standards for students with the most significant cognitive disabilities. The Department has not previously waived this requirement, since using a single assessment across an LEA is necessary for parents and the public to review comparable results. Separately, A.R.S. 15-741.02 would permit LEAs to select from a menu of assessments for grades 3-8. In conversations, ADE noted that this is something the State intends to implement in the 2019-2020 school year. Please note that such a menu would also fail to comply with ESEA section 1111(b)(2)(B)(i). The Department has not previously granted such a waiver. The requirements that all students are held to the same, high challenging academic standards and are assessed on the same statewide assessment form the basis for much of a State's accountability system and provide essential and comparable information to parents and the public.

Second, as identified following a peer review of the State's assessment system in April 2016, and as noted in a letter to ADE on December 2, 2016 (available at: <https://www2.ed.gov/admins/lead/account/nclbfinalassess/az6.pdf>), ADE does not have a single statewide high school assessment, but rather allows any of three AzMERIT end-of-course reading/language arts and mathematics assessments to be used. To date, ADE has not responded to the assessment peer review feedback regarding the lack of a single statewide assessment in reading/language arts and mathematics with any corrective action. As a result, high school accountability data in reading/language arts and mathematics are not comparable statewide and the State is out of compliance with the requirement to assess all high school students with the *same* high school assessment. To come into compliance, the State needs to require that all students take one test. ADE has flexibility to determine whether that is one of the end-of-course AzMERIT tests for each subject or the ACT, SAT, or some other test.

Based on ADE's non-compliance, including failure to address the Title I, Part A grant condition related to this issue that was imposed on December 2, 2016, and pursuant to the authority in 2 C.F.R. §§ 200.207 and 3474.10, I have therefore determined to place ADE's fiscal year 2018 Title I, Part A grant award on "high-risk" status immediately. In order to remove the high-risk status for Title I, Part A, ADE must demonstrate that it has selected and is consistently requiring a single statewide high school assessment by providing relevant documentation on or before May 31, 2019.

ADE may request reconsideration of its "high-risk" designation for Title I, Part A by submitting to me in writing, no later than 10 business days from the date of this letter, a detailed description setting forth the basis for its belief that this designation is improper, including the specific facts that support its position. If ADE chooses to request such reconsideration, that request must be submitted via email to me, with a copy to my staff at OSS.Arizona@ed.gov. If I do not receive a request for reconsideration by Monday April 8, 2019 ADE's "high-risk" status for Title I, Part A will be considered final and will be lifted only upon completing the actions set forth above.

Failing to administer the same statewide assessment to all students in the State will result in additional enforcement action if the high school reading/language arts and mathematics issue is not remedied and if ADE implements a menu of assessments in grades 3-8.

ADE may revise its waiver request, consistent with section 8401(b)(4)(B)(ii) of the ESEA to meet the requirements under sections 8401(b)(1)(C) and (F), and resubmit the revised waiver request. If ADE decides to resubmit, it must do so no later than 60 days from the date of this letter.

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 my staff at: OSS.Arizona@ed.gov. Staff members remain ready and willing to provide technical assistance as needed.

Sincerely,

/s/

Frank T. Brogan
Assistant Secretary
for Elementary and Secondary Education

cc: Charles Tack, Associate Superintendent, Policy Development and Government Relations
Kelly Koenig, Associate Superintendent, Student Achievement and Educator Excellence Division
Audra Ahumada, Deputy Associate Superintendent, Assessment Section