

Enclosure D

Special Condition (Alternate Assessments in Science)

1. Basis for Requiring a Special Condition

The requirements in Part B of the Individuals with Disabilities Education Act (IDEA) that States: (1) ensure that all children with disabilities are included in all general State and districtwide assessment programs, including assessments described in section 1111 of the Elementary and Secondary Education Act of 1965 (ESEA), with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs (IEPs); and (2) develop and conduct alternate assessments consistent with IDEA section 612(a)(16)(C) are crucial to ensuring that children with disabilities are provided access to high-quality instruction in the general education curriculum. 20 U.S.C. 1412(a)(16). IDEA, as amended by the Every Student Succeeds Act (ESSA), requires that a State's alternate assessments must be aligned with the State's challenging academic content standards under ESEA section 1111(b)(1)(B). 20 U.S.C. 1412(a)(16)(C)(ii)(I). Further, if the State has adopted alternate academic achievement standards permitted under ESEA section 1111(b)(1)(E) and the regulations promulgated under Title I, Part A of the ESEA, the State's alternate assessments must measure the achievement of students with the most significant cognitive disabilities, as referred to in ESSA section 1111(b)(2)(D), against those standards. 20 U.S.C. 1412(a)(16)(C)(ii).¹

As set out in the Department's June 17, 2016 letter to Commissioner Stephen Pruitt, the Kentucky Department of Education (KDE) communicated to the Department that it did not administer operational alternate assessments or set alternate achievement standards in science for students with the most significant cognitive disabilities for the 2014-2015 or 2015-2016 school years, as required by 20 U.S.C. 1412(a)(16)(A) and (C). In the 2014-2015 and 2015-2016 school years KDE piloted new alternate assessments in science based on alternate academic achievement standards for students with the most significant cognitive disabilities based on new academic content standards in science. Therefore, the Department determined Kentucky was in violation of 20 U.S.C. 1412(a)(16)(A) and (C) and 34 CFR §300.160 (a) and (c) for failure to conduct fully operational alternate assessments in science that was aligned with Kentucky's challenging academic content standards and alternate academic achievement standards, as permitted under the regulations for Title I of the ESEA, for the 2014-2015 and 2015-2016 school years. The Department determined that Kentucky did not comply with all the terms and conditions of prior awards under Part B of IDEA, and, pursuant to the authority in IDEA section 616(g) and 2 CFR. §200.207 a Special Condition was imposed on Kentucky's FFY 2016 IDEA Part B grant award. In subsequent conversations and correspondence, after June 1, 2017, Kentucky communicated that fully operational alternate assessments in science were conducted in the 2016-2017 school year. The Department recognizes KDE's progress in administrating operational alternate assessments.

¹¹ The statutory provision cited above reflects the amendments made to IDEA section 612(a)(16)(C)(ii) by section 9215(ss)(3)(B) of the ESSA. The amendments to the IDEA made by the ESSA, which take effect with IDEA Part B funds awarded to States for FFY 2017, retain the requirements that formed the basis for imposing Special Conditions pursuant to IDEA section 616(g) and 2 CFR §200.207 on Indiana's FFY 2016 IDEA Part B grant award.

However, as explained in the correspondence from KDE to the Department dated June 28, 2017, KDE has not finalized alternate academic achievement standards for its alternate assessments in science conducted in the 2016-2017 school year. KDE explained that a “standards setting process” occurred on June 21, 2017 for the alternate science assessments that were administered during the 2016-2017 school year and that Commissioner Pruitt approved the cut scores. However, KDE explained further that the cut scores were still undergoing KDE’s routine processes of data analysis and psychometric review. Based on this correspondence, OSEP has determined that KDE has not provided sufficient documentation demonstrating that it has conducted fully operational alternate assessments in science that are capable of measuring the achievement of students with the most significant cognitive disabilities who took those assessments during the 2016-2017 school year. Therefore, Kentucky has not yet met the terms and conditions imposed on its FFY 2016 IDEA part B grant award as detailed in Enclosure D.

Because Kentucky continues to be in violation of 20 U.S.C. 1412(a)(16)(A) and (C) and 34 CFR §300.160(a) and (c), Kentucky has failed to meet the terms and conditions of its prior grant award. Therefore, pursuant to IDEA section 616(g) and 2 CFR §200.207, OSEP is continuing to impose a special condition on Kentucky’s FFY 2017 IDEA Part B grant award.

2. Nature of the Special Condition

By June 1, 2018, Kentucky must demonstrate that it administered fully operational alternate assessments in science during the 2016-2017 school year for students with the most significant cognitive disabilities at least once in grades 3-5, 6-9, and 10-12 aligned with alternate academic achievement standards.

The State must submit to OSEP by August 31, 2017, documentation demonstrating that the State has finalized alternate academic achievement standards in science for students with the most significant cognitive disabilities as permitted under ESEA section 1111(b)(1)(E) so that the State was able to measure student achievement on the alternate assessments in science administered in the 2016-2017 school year under IDEA section 612(a)(16)(A) and (C) to assess student progress under Title I, Part A of the ESEA against its alternate academic achievement standards.

3. Evidence Necessary for Condition To Be Removed

The Department will remove the special condition if, at any time prior to the expiration of the grant year (June 30, 2018), Kentucky provides documentation, satisfactory to the Department, that it has met the requirement to administer fully operational alternate assessments in science that are aligned with its alternate academic achievement standards for students with the most significant cognitive disabilities and measure student achievement in science against the State’s alternate academic achievement standards in the 2016-2017 school year.

4. Method of Requesting Reconsideration

The State can write to the Office of Special Education Programs Acting Director, Ruth E. Ryder, at the address below, if it wishes the Department to reconsider any aspect of this Special Condition. The request must describe in detail the changes to the Special Condition sought by the State and the reasons for those requested changes.

5. Submission of Reports

All reports that are required to be submitted by Kentucky to the Department under the Special Condition must be submitted to:

Curtis Kinnard
Office of Special Education and Rehabilitative Services
U.S. Department of Education
550 12th Street, SW
Washington, DC 20202