

Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Negotiated Rulemaking Committee

Updated for Session Three, April 18-19, 2016

Issue Paper #3

Issue: Locally selected, nationally recognized high school assessments

Statutory Cite: 1111(b)(2)(H) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA)

Regulatory Cite: ~~n/a~~ Proposed draft §200.3

Background:

Section 1111(b)(2)(B) (i) and (v) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), maintain the requirement that a State administer the same assessments in mathematics and reading/language arts to all students in each of grades 3 through 8 and at least once in high school, and in science once in each of three grade spans (elementary, middle, and high school). Section 1111(b)(2)(H), however, provides new flexibility for a State to approve a school district to administer, in lieu of the statewide high school assessment, a “locally selected,” “nationally recognized” high school academic assessment that has been approved for use by the State and peer reviewed through the U.S. Department of Education’s (ED) Title I assessment peer review. ESSA accompanying report language indicated, “It is the intent of the Conferees that existing assessments already widely recognized as validly measuring student performance, such as ACT or SAT exams, may, subject to approval described in this subparagraph, be selected and used.”

If a State chooses to allow a district to select a nationally recognized high school assessment, it must establish technical criteria to approve such an assessment. At a minimum, ESSA requires that the technical criteria must enable the State to determine that the locally selected, nationally recognized high school assessment the district wishes to administer in lieu of the statewide test: (1) is aligned to and addresses the breadth and depth of the State’s content standards; (2) is equivalent in its content coverage, difficulty, and quality to the statewide assessments; (3) provides comparable, valid, and reliable data on student achievement as compared to the statewide assessments for all students and for each subgroup of students, including by reporting results in terms consistent with the State’s academic achievement standards; (4) meets the criteria for technical quality that all statewide assessments must meet under Title I; and (5) provides unbiased, rational, and consistent differentiation among schools within the State’s accountability system. Once a locally selected, nationally recognized high school assessment has been approved through ED’s Title I assessment peer review process and the State has approved such an assessment consistent with its technical criteria, any other district in the State may use that assessment so long as the district notifies the State that it intends to do so.

In addition, ESSA requires that a district that chooses to exercise this option must notify the parents of all high school students that it is requesting approval from the State to administer a locally selected, nationally recognized high school assessment, and upon approval of the assessment and at the beginning of each subsequent school year during which it uses the assessment, the district must

notify parents in writing that it will administer a high school assessment other than the statewide assessment.

Discussion Questions:

While this new statutory provision has the potential to reduce burden for high school students who are often taking multiple assessments around the same time of their academic career in addition to the statewide high school assessment – for example, standardized college entrance exams, final exams tied to particular courses, and Advanced Placement or International Baccalaureate tests – it also raises several questions. For example:

- What does it mean for an assessment to be “nationally recognized”?
- What safeguards could regulations include to ensure that all students within the district will have equal access to, and receive equal educational benefit from, the district-selected assessment?
- How should the regulations ensure that the accommodations provided to students on locally selected, nationally recognized assessments reflect the needs of the student, as determined under the Individuals with Disabilities Education Act (IDEA) or section 504 of the Rehabilitation Act (section 504)?
- What safeguards can help ensure that all students, including students with disabilities who use accommodations, as prescribed on an individualized education program (IEP) required under the IDEA or plan under section 504, are able to use their test results for the same purposes as their non-disabled peers?
- How can a State ensure that locally selected, nationally recognized high school assessments are aligned to State content standards and provide comparable results against the State’s academic achievement standards, so that students in different districts are not being held to different standards and the State maintains the same high expectations of all students?
- How can regulations ensure that parents and educators have the same information about each student compared to other students within the district, and that district administrators have comparable data about students and schools to inform district decision-making?

Session 3 Update

The language below is suggested for inclusion as §200.3. Underlined text has changed since session 2. As it did previously, blue text denotes statutory language and red text indicates proposed regulatory language. Unshaded text denotes areas of primary consideration for session 3. These sections were identified as outstanding items during session 2. Gray shaded areas are not expected to require substantial additional conversation.

Remove and replace the current text of §200.3 with the following:

§200.3. Locally Selected, Nationally Recognized High School Academic Assessments.

(a) In general. (1) A State, at the State’s discretion, may permit an LEA to administer a nationally recognized high school academic assessment in each of reading/language arts,

Key: Blue text comes directly from the ESEA statute, as amended by ESSA. Red text builds on the statute. Underlined text is new in session 3. Unshaded text denotes areas of primary consideration for session 3.

mathematics, or science, approved in accordance with paragraph (b) of this section, in lieu of the respective statewide assessment under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C) ~~if such assessment meets all requirements of this section.~~

(2) An LEA must administer the same locally selected, nationally recognized academic assessment to all high school students in the LEA consistent with the requirements in §200.5(a)(1)(i)(B) and (a)(1)(ii)(C).

~~(3) Before an LEA requests approval from the State to use a locally selected, nationally recognized high school academic assessment, the LEA must provide an opportunity for meaningful consultation to all public charter schools whose students would be included in such assessments.~~

(b) State approval. If a State chooses to allow an LEA to administer a nationally recognized high school academic assessment under paragraph (a) of this section, the State must--

(1) Establish and use technical criteria to determine if the assessment--

(i) Is aligned with~~to~~ the challenging State academic standards;

(ii) Addresses the depth and breadth of those standards;

(iii) Is equivalent to or more rigorous than the statewide assessments under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable, with respect to--

(A) The coverage of academic content;

(B) The difficulty of the assessment;

~~(C) The cognitive complexity of the assessment overall;~~

~~(CD) The overall quality of the assessment; and~~

~~(DE) Any other aspects of the assessment that the State may establish in its technical criteria;~~

(iv) Meets all requirements under §200.2(b), except for §200.2(b)(1), and ensures that all high school students in the LEA are assessed consistent with §§200.5(a) and 200.6; and

(v) Produces valid and reliable data on student academic achievement with respect to all high school students and each subgroup of high school students in the LEA that--

(A) Are comparable to student academic achievement data for all high school students and each subgroup of high school students produced by the statewide assessment;

(B) Are expressed in terms consistent with the State's academic achievement standards under section 1111(b)(1)(A) of the Act; and

(C) Provide unbiased, rational, and consistent differentiation among schools within the State for the purpose

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of the State-determined accountability system under section 1111(c) of the Act;

(2) Before approving any nationally recognized high school academic assessment for use by an LEA in the State--

(i) Ensure that use of appropriate accommodations under §200.6(b) and (f) (1)(i)(A) and (3)(iv) does not deny any student the opportunity to participate in the assessment or afford any benefit from such participation that is not equal to the benefit afforded to students who do not use such accommodations; and

(ii) Submit evidence to the Secretary in accordance with the requirements for peer review of State assessments under section 1111(a)(4) of the Act demonstrating that any such assessment meets the requirements of ~~in~~ this section; and

(3) Approve an LEA's request to use a locally selected, nationally recognized high school academic assessment that meets the requirements of ~~in~~ this section.

(c) LEA applications. ~~(1) As part of requesting approval to use a locally selected, nationally recognized high school academic assessment, an LEA must update its LEA plan under section 1112 or section 8305 of the Act, including how it was developed consistent with all requirements for consultation under sections 1112 and 8538 of the Act.~~

(12) Before an LEA requests approval from the State to use a locally selected, nationally recognized high school academic assessment, the LEA must--

(i) Notify all parents of high school students it serves--

(A) That the LEA intends to request approval from the State to use a locally selected, nationally recognized high school academic assessment in place of the statewide academic assessment under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable;

(B) How parents may provide meaningful input regarding the LEA's request; and

(C) Of any effect of such request on the instructional program in the LEA; and

(ii) Provide an opportunity for meaningful consultation to all public charter schools whose students would be included in such assessments.

(2) As part of requesting approval to use a locally selected, nationally recognized high school academic assessment, an LEA must--

(i) Update its LEA plan under section 1112 or section 8305 of the Act, including to describe how the request was developed consistent with all requirements for consultation under sections 1112 and 8538 of the Act.

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(ii) If the LEA is a charter school ~~is an LEA under State law,~~ provide an assurance that the use of the assessment is consistent with State charter school law and it has consulted with the authorized public chartering agency.

(43) Upon approval, the LEA must notify all parents of high school students it serves that the LEA received approval and will use such locally selected, nationally recognized high school academic assessment instead of the statewide academic assessment under §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable.

(54) In each subsequent year following approval in which the LEA elects to administer a locally selected, nationally recognized high school academic assessment, the LEA must notify-

(i) The State of its intention to continue administering such assessment; and

(ii) Parents of which assessment the LEA will administer to students to meet the requirements of §200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable, at the beginning of the school year.

(65) The notices to parents under this paragraph must be consistent with §200.2(e).

~~(i) Be in an understandable and uniform format;~~

~~(ii) Be, to the extent practicable, written in a language that parents and guardians can understand or, if it is not practicable to provide written translations to a parent or guardian with limited English proficiency, be orally translated for such parent or guardian;~~

~~(iii) Be, upon request by a parent or guardian who is an individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. 12102, provided in an alternative format accessible to that parent or guardian, including, but not limited to, braille, large print, or electronic file; and~~

(d) Definition. "Nationally recognized high school academic assessment" means an assessment of high school students' knowledge and skills ~~of high school students~~ that is administered in multiple States and is used-accepted by institutions of higher education in those or other States for the purposes of entrance or placement into courses in post-secondary education or training programs ~~or courses of study or for placement into courses in post-secondary education or training programs or courses of study.~~

(Authority: 20 U.S.C. 6311(b)(2)(H), 6312(a), 7918; 29 U.S.C. 794; 42 U.S.C. 2000d-1, 12102, and 12132)

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