

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

**Issue Paper #4b**

**Issue: State administration of alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities, subject to a cap of 1.0 percent of students assessed for a subject**

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

**Regulatory Cite: n/a**

**Background:**

Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESSA), requires each State to adopt the same challenging academic content standards and aligned academic achievement standards for all public schools and public school students in the State. A State's academic content standards define what students should know and be able to do at each grade level; a State's academic achievement standards include both achievement level descriptors and "cut scores" associated with various levels of student achievement (e.g., basic, proficient, advanced) to indicate the extent to which a student has mastered the content standards. Section 1111(b)(2)(B)(i) and (v) of the ESEA, as amended by the 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 grade span (elementary, middle, and high school).

Departing from the general rules above, section 1111(b)(1)(E) of the ESEA, as amended by the ESSA, authorizes a State to adopt alternate academic achievement standards for students with the most significant cognitive disabilities, provided those alternate achievement standards are aligned with the State's academic content standards, promote access to the general education curriculum, reflect professional judgment as to the highest possible standards achievable by such students, are designated in a student's individualized education program (IEP), and enable a student who meets the standards to be on track to pursue postsecondary education or employment. Section 1111(b)(2)(D) of the ESEA, as amended by the ESSA, allows a State to administer an alternate assessment aligned to alternate academic achievement standards (alternate assessment) for students with the most significant cognitive disabilities.

Section 1111(b)(2)(D) limits the number of students who may take such an alternate assessment to no more than 1.0 percent of the total number of all students in the State who are assessed in a given subject (i.e., reading/language arts, mathematics, and science). This is a change from the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), and current regulations. Those regulations do not limit the percentage of students who may take an alternate assessment in a subject, but cap the percentage of proficient scores on such assessments that may be counted for Federal accountability purposes at 1.0 percent of the total number of all students in the State who were assessed in the subject.

Under the ESEA, as amended by the ESSA, to administer an alternate assessment, a State must ensure that the assessment meets specific requirements identified in section 1111(b)(2)(D), including new requirements with respect to parental notification, educator training in using accommodations and administering alternate assessments, and incorporation of universal design for learning in developing such assessments. A State must also show that a student who takes an alternate assessment is not precluded from attempting to complete the requirements for a regular high school diploma, and that, in accordance with the Individuals with Disabilities Education Act (IDEA), a child's IEP team determines whether a child will take an alternate assessment in accordance with the State's assessment guidelines.

Section 1111(b)(2)(D)(ii)(II) precludes ED or a State from setting a district-level cap on the percentage of students who may be assessed with an alternate assessment, but the law also specifies that any district that exceeds the 1.0 percent cap applied to the State must submit information to the State justifying the need to exceed it. In such an instance, the State is required to provide the district with appropriate oversight, as determined by the State. The alternate assessment requirements are subject to the Secretary's waiver authority under ESSA section 8401.

### **Discussion Questions:**

While these new statutory provisions promote equity for students with the most significant cognitive disabilities who have at times not been provided meaningful opportunities to demonstrate what they know and can do against grade-level content standards, they also raise questions with regard to implementation. For example:

- Should the regulations define “students with the most significant cognitive disabilities”?
- How will a State be able to ensure that it does not assess more than 1.0 percent of children with the most significant cognitive disabilities with an alternate assessment in a given subject since it is not able to limit the number of students assessed with an alternate assessment at the district or school level?
- Are there instances in which a State could justify testing more than 1.0 percent of students with an alternate assessment? If so, what should ED take into consideration when deciding whether to grant a waiver of the 1.0 percent State-level cap?
- Are there actions or activities a State should take to ensure all students are being properly included in the assessment system? Are there safeguards ED should consider to ensure all students, including students with the most significant cognitive disabilities, are being properly included in a State's assessment system?