

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 #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: Proposed draft §200.6(c)(2)-(4)

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?

Session 3 Update

The below language is suggested for inclusion in paragraph (c) of §200.6. Underlined text has changed since session 2 (except where it is used as the title of a paragraph). As it did previously, **blue** text denotes statutory language, **bold blue** text indicates corrections to language shown as statutory in a prior version, and **red** text indicates proposed regulatory language.

(c) Alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities. ~~(i1) The State's academic assessment~~

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~~system, developed consistent with §200.2, must provide for one or more alternate assessments in reading/language arts, mathematics, and science for a child with a disability, as defined under section 602(3) of the IDEA, whom the child's IEP team determines cannot participate in all or part of the State assessments under paragraph (a)(1) of this section, even with appropriate accommodations, provided such alternate assessments--~~

~~(i) Are aligned with the challenging State academic content standards under section 1111(b)(1) of the Act; and~~

~~(ii)(A) Alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007-2008 school year, science, except as provided in the following paragraph.~~

~~(B2)(1) If a State has adopted defined alternate academic achievement standards permitted under section 1111(b)(1)(E) of the Act --for students with the most significant cognitive disabilities, alternate assessments may yield-- the State must measure the achievement of those students with an alternate assessment that--~~

(i) Is aligned with the challenging State academic content standards under section 1111(b)(1) of the Act **for the grade in which the student is enrolled;**

(ii) **Yields** results that measure the achievement of **for** those students relative to the alternate academic achievement standards the State has defined under §200.1(d) ~~section 1111(b)(1)(E) of the Act.;~~ **and**

(iii) At the State's discretion, provides valid and reliable measures of student growth across the full spectrum of student achievement at all alternate academic achievement levels to help ensure that the assessment results can be used to improve student instruction.

~~(3) For each subject for which assessments are administered under §200.2(a)(1), the total number of students assessed in that subject using an alternate assessment aligned with alternate academic achievement standards under paragraph (c)(2) of this section may not exceed 1.0 percent of the total number of students in the State who are assessed in that subject.~~

~~(iii) If a State permits the use of alternate assessments that yield results based on alternate academic achievement standards, the State must document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum.~~

(3) ~~The~~A State must--

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(i) Not prohibit an LEA from assessing more than 1.0 percent of its assessed students in a given subject with an alternate assessment aligned with~~to~~ alternate academic achievement standards;

(ii) Require that an LEA submit ~~Review~~ information justifying the need of an LEA to assess more than 1.0 percent of its assessed students with such an alternate assessment, ~~such as evidence that school, community, or health programs in the LEA have drawn large numbers of families of students with the most significant cognitive disabilities or that the total number of students assessed in the LEA is so small that the LEA would assess more than 1.0 percent of its assessed students using an alternate assessment even if only one or a few students take such assessment; and~~

(iii) Provide appropriate oversight, as determined by the State ~~based on its review of information under paragraph (c)(3)(ii) of this section, of an LEA that does not provide sufficient justification~~ **is required to submit information to the State;** and

(iv) Make the information submitted by an LEA under paragraph (c)(3)(ii) of this section publicly available, provided that such information does not reveal personally identifiable information about an individual student.

(4) If a State ~~anticipates that it will exceed~~ ~~does not meet the requirement~~ cap under paragraph (c)(32) of this section with respect to any subject for which assessments are administered under §200.2(a)(1) in any school year, the State may request that the Secretary waive the cap for the relevant subject, pursuant to section 8401 of the Act, **for one year.** Such request must--

(i) Be submitted at least 90 days prior to the start of the State's first testing window;

(ii) Provide State-level data, from the current or previous school year, to show--~~Include data demonstrating that--~~

(A) The number and percentage of State did not disproportionately assess students in eachany subgroup of students defined in section 1111(c)(2)(A), (B), and (D) of the Act who took~~with~~ the alternate assessment aligned with alternate academic achievement standards ~~in the prior school year as demonstrated by disaggregating at the State level the students who took such assessment using the subgroups defined in section 1111(c)(2)(A), (B), and (D) of the Act; and~~

(B) The State has measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup under section 1111(c)(2)(C)

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of the Act who are enrolled in grades for which the assessment is required under §200.5(a) ~~in at least the prior school year;~~

(iii) Include assurances from the State that it has verified that each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject for which assessments are administered under §200.2(a)(1) in that school year using an alternate assessment aligned with alternate academic achievement standards, and any other LEA that the State determines will significantly contribute to the State's exceeding the cap under paragraph (c)(2) of this section--

(A) Followed each of the State's guidelines under paragraph (d) of this section except (d)(6);

(B) Will not significantly increase, from the prior year, the extent to which the LEA assessed more than 1.0 percent of students in any subject for which assessments were administered under §200.2(a)(1) in that school year using an alternate assessment aligned with alternate academic achievement standards unless the LEA has demonstrated to the State a higher prevalence of students with the most significant cognitive disabilities than were enrolled in assessed grades in the prior year; and

(C) Will address any not-disproportionalityely in the number and percentage of students in any particular subgroup under section 1111(c)(2)(A), (B), or (D) of the Act taking assess students in any particular subgroup under section 1111(c)(2)(A), (B), or (D) of the Act with an alternate assessment aligned with alternate academic achievement standards;~~and~~

(iv) Include a plan and timeline by which--

(A) The State will improve the implementation of its guidelines under paragraph (d) of this section so that the State meets the cap in paragraph (c)(2) of this section in each subject for which assessments are administered under §200.2(a)(1) in future school years;

(B) The State will take additional steps to support and provide appropriate oversight to each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in a subject in a school year using an alternate assessment aligned with alternate academic achievement standards, and any other LEA that the State determines will significantly contribute to the State's exceeding the cap under paragraph (c)(2) of this section, to ensure that only students with the most significant cognitive disabilities take an alternate assessment aligned with alternate academic achievement standards. The State must describe how it will monitor and regularly evaluate each such LEA to ensure that the LEA provides sufficient training such that school staff who participate as

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members of an IEP team or other placement team understand and implement the guidelines established by the State under paragraph (d) of this section so that all students are appropriately assessed; and

(C) The State will address any disproportionality in the number and percentage of students taking an alternate assessment aligned with alternate academic achievement standards as identified through the data provided in accordance with paragraph (c) (4) (ii) (A) of this section; and

(v) If the State is requesting to extend a waiver for an additional year, it must meet the requirements in paragraph (c) (4) (i) through (iv) and demonstrate progress towards achieving each component of the prior year's plan and timeline required under paragraph (c) (4) (iv) of this section.

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