



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable Christopher A. Koch
State Superintendent of Instruction
Illinois State Board of Education
100 North First Street
Springfield, IL 62777

Dear Superintendent Koch:

This letter is in response to your November 25, 2014 letter to Secretary Arne Duncan, regarding various inquiries that have arisen in Illinois about the requirements for State assessments under the Elementary and Secondary Education Act of 1965, as amended (ESEA) and, concomitantly, ESEA flexibility. Your letter was referred to the Office of Elementary and Secondary Education, and I am pleased to respond on behalf of Secretary Duncan.

Before I respond to your two specific questions, please let me emphasize the importance of the assessment requirements in the ESEA. A high-quality, annual Statewide assessment system is essential to providing critical information regarding student achievement to parents and educators at all levels. When that system is aligned with the academic content and achievement standards that a State expects all children to know and be able to do, it provides important information on all students so that educators can enhance instruction, improve educational outcomes, close achievement gaps among subgroups of historically underserved students, and increase equity.

Below, I have responded to each of the questions for which you have asked ED to confirm the Illinois State Board of Education's (ISBE's) interpretation of certain provisions of Section 1111(b)(3), providing the statutory and regulatory citations, as applicable, and noting any differences between the statutory and regulatory requirements of the ESEA and ESEA flexibility.

1. Please confirm that, under the ESEA, a local educational agency (LEA) is not allowed to "take a year off" from assessing students.

The ISBE's interpretation is correct. ESEA section 1111(b)(3) (20 U.S.C. § 6311(b)(3)) requires a State educational agency (SEA) that receives funds under Title I, Part A of the ESEA to implement in each local educational agency (LEA) in the State a set of high-quality, yearly academic assessments that includes, at a minimum, assessments in mathematics, reading or language arts, and science. With respect to reading/language arts and mathematics, the assessments must be administered in each of grades 3 through 8 and, at minimum, once in grades 10 through 12. With respect to science, the assessments must be administered, at minimum, once during grades 3 through 5, once during grades 6

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through 9, and once during grades 10 through 12. Under ESEA flexibility, these requirements have not been waived.

Please note that an LEA may not avoid administering the State assessments required under ESEA section 1111(b)(3) by declining to accept Title I, Part A funds. As noted above, the assessment requirements are State-level requirements that apply to any SEA that accepts Title I, Part A funds. That SEA must then administer its assessments Statewide — including to students in LEAs that do not participate in Title I.

Note also that, although an LEA may not “take a year off” from assessing students, under recently-issued ESEA flexibility renewal guidance, an SEA approved for ESEA flexibility may amend its ESEA flexibility request to indicate that it will “pause” the implementation of its school rating or grading system following the administration of new, college- and career-ready aligned assessments. An SEA interested in this pause would indicate that schools will retain their 2014-2015 grade or rating in 2015-2016 but will continue to implement appropriate interventions based on the continued grade or rating. Further guidance about this flexibility in assigning new school ratings or grades in the year following the administration of new college- and career-ready aligned assessments is available on the U.S. Department of Education’s website.

2. Please confirm that it would be inconsistent with ESEA requirements for a State to offer “a menu of assessments” from which local school districts could select to administer to students.

The ISBE’s interpretation is correct. ESEA section 1111(b)(3)(C)(i) requires State assessments to “be the same academic assessments used to measure the achievement of all children (emphasis added).” So, with certain limited exceptions described below, the assessments an SEA develops must be the same for all students in the State. An SEA may not assess only a sample of students, even if that sample is representative of students in each LEA or the State as a whole.

One exception to the general requirement that a State’s assessment must be the same for all students is the authority in the Title I regulations for an SEA to adopt alternate academic achievement standards and alternate assessments aligned with those standards for students with the most significant cognitive disabilities. See 34 C.F.R. §§ 200.1(d), 200.6(a)(2)(ii)(B). These standards and assessments apply to a very small number of students with disabilities who, even with the very best instruction, are not likely to meet the grade-level academic achievement standards that apply to all students.

ESEA section 1111(b)(5) (20 U.S.C. § 6311(b)(5)) is another exception. It applies only in a State that provides evidence, satisfactory to the Secretary, that neither the SEA nor any other State government entity has sufficient authority under State law to adopt standards and assessments that would be applicable to all students enrolled in public schools in the State. In this case, the SEA may meet the requirements of ESEA section 1111(b)(3) by adopting academic standards and assessments on a Statewide basis, and limiting their applicability to students served under Title I, or adopting and implementing policies that ensure the each Title I LEA in the State adopts academic content and achievement standards and aligned assessments that meet all of the requirements in section 1111(b)(3) and corresponding regulations and apply to all students in the LEA.

Finally, the regulations permit an SEA to include a combination of State and local assessments in its State assessment system, but only if the SEA meets a very high bar. Under 34 C.F.R. § 200.3(b) in order to include a combination of State and local assessments in its State assessment system, an SEA must demonstrate that the system has a rational and coherent design that –

- Identifies the assessments to be used;
- Indicates the relative contribution of each assessment towards ensuring alignment with the State’s academic content standards and determining the adequate yearly progress (AYP) of each school and LEA; and
- Provides information regarding the progress of students relative to the State’s academic standards in order to inform instruction.

Under 34 C.F.R. § 200.3(c), an SEA that includes local assessments in its State system must first –

- Establish technical criteria to ensure that each local assessment meets the requirements of 34 C.F.R. § 200.3(a)(1) and (c)(2);
- Demonstrate that all local assessments are (1) equivalent to one another and to the State assessments in their content coverage, difficulty, and quality; (2) have comparable validity and reliability with respect to student subgroups; and (3) provide unbiased, rational, and consistent determinations of the annual progress of schools and LEAs in the State;
- Review and approve each local assessment to ensure that it meets or exceeds the State’s technical criteria; and
- Be able to aggregate, with confidence, data from local assessments to determine whether the State has made AYP.

Further, while you did not ask about this, I also want to call to your attention to one additional issue. If an SEA fails to comply with the assessment requirements in either the ESEA or ESEA flexibility, ED has a range of enforcement actions it can take including:

- sending a letter to the SEA requesting that it come into compliance;
- increasing monitoring;
- placing a condition on the SEA’s Title I, Part A grant award or its ESEA flexibility request;
- placing the SEA on high-risk status (34 C.F.R. § 80.12);
- issuing a cease and desist order (GEPA section 456 (20 U.S.C. § 1234e));
- entering into a compliance agreement with the SEA to secure compliance (GEPA 457 (20 U.S.C. § 1234f));
- withholding all or a portion of the SEA’s Title I, Part A administrative funds (ESEA section 1111(g)(2) (20 U.S.C. § 6311(g)(2))); and
- suspending, and then withholding, all or a portion of the State’s Title I, Part A programmatic funds (GEPA section 455 (20 U.S.C. § 1234d)).

Please note that an SEA has similar enforcement actions available to it with respect to noncompliance by an LEA, including withholding an LEA’s Title I, Part A funds. See, e.g., GEPA section 440 (20 U.S.C. § 1232c(b)). The SEA has additional enforcement options available against a non-complying LEA under 34 C.F.R. § 80.43.

The specific enforcement action(s) ED may take would depend on the severity of non-compliance. For example, if an SEA has developed a Statewide assessment system but that system is not approvable because it fails to meet all statutory and regulatory requirements, ED might condition the SEA’s Title I, Part A grant award, place the SEA on high-risk status, enter into a compliance agreement, or withhold State administrative funds. ED has, in fact, withheld Title I, Part A administrative funds under ESEA section 1111(g) (20 U.S.C. § 6311(g)) from a number of States for failure to comply with the assessment requirements in ESEA section 1111(b)(3). On the other hand, if an SEA or LEA refuses to implement an assessment system that meets the statutory and regulatory requirements, ED might seek to withhold programmatic funds from the State and expect the SEA to withhold from the LEA. Clearly, if an SEA

or LEA fails to comply with the assessment requirements in either the ESEA or ESEA flexibility, it could place its Title I, Part A funds in jeopardy.

An SEA or LEA that fails to comply with assessment requirements could also find itself out of compliance with a wide range of additional Federal programs that rely on Statewide assessment results, putting additional funds at risk. These additional programs include those targeting students most at risk including, but not limited to: the School Improvement Grants (SIG) program; ESEA Title III; Part B of the Individuals with Disabilities Education Act (IDEA); programs for rural schools under ESEA Title VI; migrant education under ESEA Title I, Part C; and programs focused on professional development and other supports for teachers, such as ESEA Title II.

Please do not hesitate to contact me if you need additional information or clarification. Thank you for your continued commitment to supporting all educators and enhancing education for all of Illinois' students.

Sincerely,

Deborah Delisle
Assistant Secretary