

Docket ID ED-2016-OESE-0053:

**Title I – Improving the Academic Achievement of the Disadvantaged -
Academic Assessments**

Comments due by September 9, 2016

1. §200.2 State responsibilities for assessment.

(b)(4)(i) Be valid, reliable, and fair for the purposes for which the assessments are used; and

(ii) Be consistent with relevant, nationally recognized professional and technical testing standards;

81 FR 44949

Arizona is fully supportive of the expectation that statewide assessments are consistent with relevant, nationally recognized professional and technical testing standards. Assessment programs should be expected to comply with the latest relevant, nationally recognized professional and technical standards. Statement (i) is fully subsumed by statement (ii). The nationally recognized professional and technical testing standards also address the criteria for developing and evaluating tests and test score usage which would reasonably be expected to change over time. Keeping statement (ii) and deleting statement (i) does not reduce the commitment to valid, reliable, and fair assessments, but does allow, over the lifetime of these regulations, expectations for assessments to adapt to emerging research and proven practices governing professional and technical testing standards for appropriate student assessment.

2. §200.3 Locally selected, nationally recognized high school academic assessment.

(a)(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), except for students with the most significant cognitive disabilities who are assessed on an alternate assessment aligned with alternate academic achievement standards, consistent with § 200.6(c).

81 FR 44950

The proposed regulations requiring all schools within an LEA to administer the same locally selected, nationally recognized academic assessment is more prescriptive than the actual text of ESSA and is not in keeping with the spirit of ESSA.

The reasoning behind this requirement, the need to maintain meaningful within district comparisons of student achievement, fails to acknowledge two key principles. It fails to acknowledge ESSA's requirement that any locally selected, nationally recognized high school academic assessments "provide comparable, valid, and reliable data on academic achievement compared to the State-designed assessments, for all students and for each subgroup of students..., with results expressed in terms consistent with the State's academic achievement standards." It also fails to acknowledge that meaningful comparisons across schools in different LEAs are also needed. Arizona, as a strong supporter of choice in public schooling, is an open-enrollment State with a large number of charter schools. When comparing performance of schools, Arizona families do not look at only the schools within their resident LEA but instead look across multiple LEAs encompassing both district and charter school options. Existing ESSA language is sufficient to ensure that meaningful comparisons of student achievement between schools within the same LEA or between schools in different LEAs can be made regardless of the test administered.

Additionally, requiring LEAs to offer the same high school assessment in all of the LEA's high schools unduly restricts large LEAs from best meeting the local needs and desires of their schools. Some LEAs are large with multiple high schools; while other LEAs are single high school LEAs. The regulations disproportionately benefit students enrolled in Arizona charter schools which tend to be their own single-school LEA. LEAs with more than one high school often differentiate the programs offered at their various high schools in response to the demands and needs of the communities they serve. Locally, at the school level, there may be strong support and valid reason to offer a more appropriate assessment that is different from the assessment offered at other high schools within the LEA. As proposed, current regulations would not permit this level of local flexibility.

(b)(2)(i) Ensure that the use of appropriate accommodations under § 200.6(b) and (f) does not deny a student with a disability or an English learner—

(A) The opportunity to participate in the assessment; and

(B) Any of the benefits from participation in the assessment that are afforded to students without disabilities or students who are not English learners;

As stated in *Standards for Education and Psychological Testing (2014)*, allowable testing accommodations are specific to a test. These test-specific allowable accommodations must respond to a student's individual need but must do so "in a way that does not change the construct the test is measuring or the meaning of scores." As this proposed regulation is written and as it is described in the Federal Register, it appears that the intent is for the accommodations specific to the State-designated assessment be applied to any locally selected, nationally recognized high school achievement assessment. Requiring that accommodations intended for one assessment be applied to another assessment can cause a change in the construct the test is measuring and the meaning of scores for students who test with accommodations that are not native to the assessment. If that is the intent of the proposed regulation, it is in direct violation of the expectation described in §200.2 that these locally selected assessment comply with relevant, nationally recognized professional and technical testing standards and is also in violation of IDEA regulations at 34 CFR 300.160(b).

It is important that all tests provide appropriate accommodations. It is unreasonable and unsound to expect that all tests provide the same accommodations. This regulation should be revised to state that any locally selected, nationally recognized high school achievement assessment must offer appropriate accommodations to allow students with disabilities and English learners access to the content and the ability to demonstrate their knowledge so that meaningful interpretation of their achievement can be drawn from their results. That is, provided accommodations must not change the construct the test is measuring or the meaning of the scores.

If the provided accommodations remove construct irrelevant barriers to accessing the test content without altering the construct the test is measuring or the meaning of the scores, it should naturally follow that any benefits from participation in the test will be afforded to all students, even those testing with accommodations.

(c)(4) 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;

81 FR 44950

The detail in this proposed regulation is clearly beyond the authority of the Department. SEAs are more than capable of establishing appropriate policies and procedures around

the timing and frequency of LEA's notification regarding administering a locally selected, nationally recognized high school academic assessment in lieu of the State's designated assessment to ensure that the State is able to administer the appropriate assessment to all students.

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

81 FR 44950

Restricting the definition of a nationally recognized high school academic assessment to only those assessments that are "recognized by institutions of higher education ...for purposes of entrance or placement into courses in postsecondary education or training programs" unnecessarily restricts the list of possible assessments to those typically administered in grades 11 and 12. ESSA allows States to meet the high school testing requirement using tests administered in grades 9 or 10 for reading/language arts and mathematics and grade 10 for science. The flexibility to administer nationally recognized high school academic assessments in lieu of the State-designated assessments should be extended to include assessments that may be administered in any high school grade consistent with the requirement for a State assessment administered to students at least once in high school. To ensure enough flexibility to validly align to the state's high school standards, the definition of a nationally-recognized high school academic assessment should include tests which may not necessarily be used for the purposes of entrance or placement into postsecondary education or training programs.

3. §200.6 Inclusion of all students.

(4) If a State anticipates that it will exceed the cap under paragraph (c)(2) 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;

81 FR 44952

The timeline for the submission of a waiver for the 1% cap is unworkable.

While schools can certainly identify among their currently enrolled students those who will participate in the alternate assessment early in the school year, schools cannot anticipate how that number might change mid-year. Arizona has a growing and mobile student population. Arizona schools see significant changes in enrollment at the start of January following Winter Break. For Arizona, the testing window typically opens in late March. A request for a waiver would have to be submitted by late December which is too early in the school year to account for mid-year school enrollment increases. Even a modest influx of students mid-year can cause the State to go from expecting to test fewer than 1% of its students to more expecting to test more than 1% of its students on the alternate assessment with no opportunity remaining to request a waiver.

Additionally, the State must submit the waiver request in advance of knowing how many students were actually assessed leaving States to guess at the actual number of students tested. The number of students permitted to participate in the alternate assessment will be quite different if the State assesses 95% or 99% of the students requiring an assessment. Not knowing the correct denominator for the 1% calculation means that some States who require a waiver will not apply while other States who do not need a waiver will apply needlessly.

The timeline for the waiver submission should be changed so that the request for a waiver is made only after it is known that the State administered the alternate assessment to more than 1% of the assessed students. The proposed timeline increases administrative burden on the SEA with little evidence of how this information will be of value to USED in changing LEAs identification of students who require an alternate assessment.