



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Education
& Early Development**

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September 9, 2016

Jessica McKinney
U.S. Department of Education
400 Maryland Avenue, SW
Room 3W1207
Washington, D.C. 20202

Re: Notice of Proposed Rulemaking [Docket ID ED-2016-OESE-0053] Title I-Improving the Academic Achievement of the Disadvantaged-Academic Assessments

Dear Ms. McKinney,

Thank you for the opportunity to comment on the proposed rules and regulations for implementation of the academic assessments under the Every Student Succeeds Act. Alaska is committed to assessing all students using assessments that are valid and reliable, including students with significant cognitive disabilities who are eligible to take the alternate assessments.

ESSA 1111(b)(2)(D)(i) provides that the total number of students with significant cognitive disabilities assessed in a state on the alternate assessment may not exceed 1% of the total number of all students in the state assessed in each subject. In addition, ESSA 1111(b)(2)(D)(ii)(IV) makes it clear that this limitation is eligible to be considered under the waiver authority in Section 8401.

The regulations as proposed in section 200.6(c)(4) provide a very explicit process and set of requirements for a state to submit a waiver for exceeding the 1% cap. The proposed regulations require a state to submit a waiver at least 90 days prior to the start of the state's first testing window if it anticipates that it will exceed the cap. There are several reasons why this would be problematic for Alaska. While the percentage of students assessed on the alternate assessments statewide in Alaska has been within 1% in most years, at times it has been greater than 1%. A small change in the number of students qualifying for the alternate assessment can have the effect of exceeding the 1% cap. It is not possible to know if the state will exceed the cap before testing occurs. The actual number of students participating in all assessments in a given year can vary not only due to occasional unforeseen circumstances, but also more often due to parents choosing not to have their students participate in the assessments. This makes it difficult to project the actual percentage of students who will take the alternate assessment out of all students assessed, even if the state does not anticipate exceeding the cap prior to the testing window. The requirement to request a waiver 90 days prior to the testing window could have the effect of requiring the state to request a waiver every year, even if it is not ultimately needed based on actual student counts.

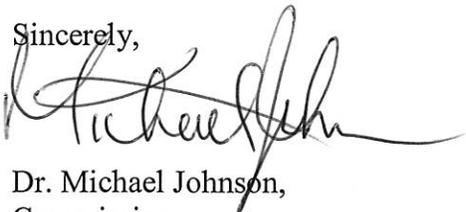
Another provision of the proposed regulations specifies that the state must show in its waiver request that 95% of all students and all students with disabilities have been assessed. The implication is that this will be a requirement for approval of a waiver of the 1% cap on the alternate assessment. The requirement to assess 95% of the students for accountability purposes is clear and will be included in the state's accountability plan. The decision about which students qualify to take the alternate assessment is a separate question from the requirement to test 95% of all students and subgroups.

Additional provisions in the proposed regulations require the SEA to assure that LEAs "will not significantly increase, from the prior year, the extent to which the LEA assessed more than 1.0 percent of students ... using an alternate assessment." An LEA would not be able to assure that it will not increase or decrease from the prior year the percentage of students using an alternate assessment because the decision for which student(s) qualify in a given LEA is based not on a formula, but on the actual criteria for eligibility for the assessment. Many LEAs in Alaska have very small populations, and a change of 1 student can significantly affect the percentage of students tested on the alternate assessment.

Finally, the proposed regulations indicate that if a state is requesting to extend a waiver for an additional year, it must "demonstrate substantial progress towards achieving each component of the prior year's plan and timeline." The plan and timeline requirements seem to be presented not only to ensure that state guidelines are appropriately followed by LEAs but imply that improving guidelines and providing oversight and support to LEAs will ensure that the state meets the 1% cap. Alaska DEED supports meaningful guidelines and training and oversight of LEAs to ensure that only students truly eligible for the alternate assessment will take that assessment. There must be a recognition, however, that the number and, thus, percentage of students eligible for the alternate assessment are based on factors that may be out of LEA or state control, including students entering and leaving school, as well as the number of students who may choose not to participate in the general assessments.

Alaska DEED recommends that the proposed regulations in 200.6(c)(4) be amended to postpone the due date for submitting a waiver from 90 days prior to the start of the test window to a reasonable time after the close of the test window in a state. DEED also recommends that the regulations not prescribe further direction on what states and LEAs must provide for justification of a waiver than what is provided in Section 8401 of the ESSA.

Sincerely,



Dr. Michael Johnson,
Commissioner

cc: Office of Governor Bill Walker, Washington DC
Senator Lisa Murkowski
Senator Dan Sullivan
Congressman Don Young